MT LEGISLATIVE HISTORY

130

Chapter 519 1985

Bill (H) 338 S _____ Original bill & hist. ___C

H. Committee on Business & Labor			S. Committee on Business & Industry		
Hearing Date(s)	JAN 31	✓C	Hearing Date(s)	MAR 19	✓C
	FEB 1	✓C		MAR 26	✓C
	FEB 12	✓C		MAR 27	✓C
	FEB 18	✓C		_____	___C
Date Out	FEB 18	✓C		MAR 29	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 338

INTRODUCED BY Addy, James Smith, Lynch, Harp, Parkin, Mercer, Bradley, Lail, Cobb, Bruce, Hartley, Stewart

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE LICENSING AND REGULATION OF TITLE INSURANCE AGENTS, THE EXAMINATION OF TITLE INSURANCE PLANTS AND THE ISSUANCE OF CERTIFICATES OF AUTHORITY THEREFOR, AND THE REGULATION OF CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY; AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213, AND 33-17-1101, MCA; AND REPEALING SECTION 33-25-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 19], 33-25-101, and 33-25-102 may be cited as the "Montana Title Insurance Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 19], 33-25-101, and 33-25-102, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted for the receipt of that representation, listing all recorded conveyances, instruments, or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title agent for a title insurance policy, but does not include a title agent.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity that controls, is controlled by, or is under common control with a producer of title business; or

(e) person with whom a producer of title business or

INTRODUCED BILL
HB 338

an associate has an agreement, arrangement, understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this title.

(5) "Controlled business" means that portion of the business of title insurance in this state of a title insurer or title agent that is referred to it by a producer or associate having a financial interest in the title insurer or title agent.

(6) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(7) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions stated in the report or other matters that may be incorporated by reference therein. Preliminary report includes a commitment or binder.

(8) (a) "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

(i) buying or selling interests in real property;

(ii) making loans secured by interests in real property; or

(iii) acting as broker, agent, or representative of a person described in subsection (8)(a)(i) or (8)(a)(ii).

(b) "Producer of title business" does not include an attorney licensed to practice law in this state.

(9) "Rate" means fees for:

(a) issuing a title insurance policy, including any service charge or fee for the issuance;

(b) abstracting, searching, and examining title to real property when prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy; and

(c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy.

(10) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of title insurance business, whether or not the consent or approval of another person is sought or obtained with respect to the referral.

(11) (a) "Title agent" means a person who holds a valid title agent's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with

underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) "Title agent" does not include an approved attorney.

(12) "Title insurance business" means:

(a) issuing or offering to issue a title insurance policy as an insurer;

(b) transacting or proposing to transact any of the following as a title insurer or title agent, in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) soliciting or negotiating the issuance of a title insurance policy;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

(iii) handling escrows, settlements, or closings;

(iv) executing title insurance policies, reports, commitments, binders, and endorsements;

(v) effecting contracts of reinsurance; or

(vi) abstracting, searching, or examining titles;

(c) transacting, as a title insurer or agent, matters subsequent to the issuance of a title insurance policy and arising out of the policy; or

(d) doing or proposing to do business that, in substance, is equivalent to any of the activities described

in subsections (12)(a) through (12)(c) in a manner designed to evade the provisions of this title.

(13) "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

(a) defects in or liens or encumbrances on the title to the stated property;

(b) unmarketability of the title to the stated property; or

(c) invalidity or unenforceability of liens or encumbrances on the stated property.

(14) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer so authorized.

(15) "Title plant" means a set of privately maintained records in which entries have been made of documents imparting constructive notice, under the law, of matters affecting title to real property, an interest therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant is maintained and from which the ownership of real property within the jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be

determined.

NEW SECTION. Section 3. Application. (1) [Sections 1 through 19], 33-25-101, and 33-25-102 apply to all title insurers, title insurance rating organizations, title agents, applicants for title insurance, title insurance policyholders, and all other persons engaged in title insurance business in this state.

(2) [Sections 1 through 19], 33-25-101, and 33-25-102 do not authorize the practice of law by a person who is not licensed to practice law in this state, and [sections 1 through 19], 33-25-101, and 33-25-102 do not authorize the commissioner to regulate the practice of law.

NEW SECTION. Section 4. Abstracts of title distinguished from title insurance policy and preliminary report. (1) A title insurance policy is not an abstract of title or representation as to the condition of title to the stated property.

(2) A preliminary report is not an abstract of title. The rights, duties, and liabilities applicable to the preparation and issuance of an abstract of title are not applicable to the issuance of a preliminary report. A preliminary report does not constitute a representation as to the condition of title to real property, but constitutes a statement of the terms and conditions upon which the issuer is willing to issue its title insurance policy.

NEW SECTION. Section 5. Limitations on authority. (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance.

(2) A title insurer may not engage in the business of guaranteeing payment of the principal or interest of bonds or mortgages.

(3) A title insurer may not engage in the business of guaranteeing the obligations of other persons, except its title agents or approved attorneys in the normal course of its business.

NEW SECTION. Section 6. Underwriting standards -- record retention. (1) A title insurer may not issue a title insurance policy unless it, its title agent, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly

reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, no title insurer or title agent may knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured or assigns arising thereunder.

NEW SECTION. Section 7. Escrow, closing, or settlement services -- title indemnification -- maintenance of accounts -- rules. (1) A title insurer or title agent may provide escrow, settlement, or closing services, or any combination thereof, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3).

(2) A title insurer or title agent shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title agent. A title insurer or agent may use such funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) pay interest on funds, deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) A title agent must keep books of account, records,

and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner that the commissioner or his authorized representative may readily ascertain, under the authority of 33-1-402, whether the title agent has complied with all applicable provisions of this title.

NEW SECTION. Section 8. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title agent and title insurer, upon appropriate notice to the parties to the contract, if he finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the agent's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title agent. Factors the commissioner may consider in this determination include but are not limited to the agent's duties under the contract and the general level of amounts paid to or retained by other title agents in the state performing or assuming comparable duties.

(2) No person may act as a title agent under an agency contract that has been disapproved by the commissioner.

NEW SECTION. Section 9. Report of claims. A title agent must immediately report every loss claim to the title

insurer that issued the policy against which the claim is presented.

NEW SECTION. Section 10. Refusal, suspension, or revocation of title agent's license. (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title agent or may suspend or revoke a title agent's license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title agent license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in the conduct of his affairs under his title agent's license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate

penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a firm, corporation, or other business entity licensed as a title agent for the actions described in subsection (1) of any individual designated in the license to exercise its powers.

NEW SECTION. Section 11. Sharing of rate proceeds. Title insurers and agents may share rate proceeds between or among themselves in any combination and may exchange business and share commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee.

NEW SECTION. Section 12. Prohibited practices -- referrals -- splitting charges -- exemptions. (1) Except as provided in subsection (2), no person may:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title agent; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title

insurance agent or franchise relationship, if:

(i) at or prior to the time of a referral a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title agent to which the person is referred; and

(ii) the person is not required to use a particular agent.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if

the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title agent for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

NEW SECTION. Section 13. Prohibited practices -- penalties -- treble damages, court costs, and attorney fees -- injunction. (1) A person found to have violated the provisions of [section 12] is jointly and severally liable to the person charged for the title insurance business involved in the violation for an amount equal to three times the amount of the charge paid for the business.

(2) In a civil action based on [section 12] and this section, the court may award to the prevailing party court costs plus reasonable attorney fees.

(3) The commissioner may bring a civil action to enjoin a violation of [section 12].

NEW SECTION. Section 14. Prohibited practices -- producer and associates -- prohibition of favored agent or insurer. No producer or associate may, directly or indirectly, require as a condition, agreement, or

understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title agent. No title insurer or title agent may knowingly participate in a plan or transaction prohibited by this section.

NEW SECTION. Section 15. Notice of issuance of mortgagee policy. (1) A title insurer or title agent that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when no owner's policy has been ordered, must inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for his protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title agent must obtain from him a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title agent must so note in the file. The

statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title agent for at least 5 years after receipt.

NEW SECTION. Section 16. Title plants -- requirement -- standards -- limitations on sale -- rules. (1) No person may act as a title insurance agent and no title insurance agent may transact the business of title insurance in this state unless the agent maintains a title plant for which the commissioner has issued a certificate of authority or a permit without inspection under the provisions of [section 17 or 19].

(2) The commissioner shall adopt rules establishing standards for operation of title plants in this state. The rules may include standards for tract indices, general name indices, maps, plats, and other organizing devices.

(3) Nothing in this section prevents two or more title agents from owning and maintaining a title insurance plant together for their joint use.

(4) No title agent may sell or otherwise transfer a title plant unless the commissioner first inspects it and determines it is in compliance with this title and the rules of the commissioner. The commissioner shall conduct a compliance inspection upon request.

NEW SECTION. Section 17. Title plants -- certificate of authority -- inspections. (1) A title agent may apply for

a title plant certificate of authority on forms provided by the commissioner.

(2) The commissioner must issue a title plant certificate of authority to a title agent if, after inspection of the plant, the commissioner finds the title plant in compliance with this title and title plant standards established by the commissioner.

(3) A certificate of authority continues from the date issued until sale or other transfer of a plant unless sooner revoked by the commissioner or relinquished by the holder

(4) The commissioner must inspect a title plant required under [sections 16 and 19] and this section. The commissioner may inspect a title plant at any time under the authority of 33-1-402 and revoke the certificate of authority of a title plant found to be not in compliance, after a hearing held pursuant to this title.

(5) The commissioner may contract with a qualified person, firm, or organization to conduct inspections under this section.

NEW SECTION. Section 18. Costs of inspection of title plants -- rules. A title agent shall pay the commissioner an inspection fee based on the reasonable costs of inspection, as established by rule by the commissioner. In establishing an inspection fee, the commissioner may include such costs as travel expenses, a reasonable expense allowance, and

compensation at reasonable rates of an inspector.

NEW SECTION. Section 19. Permit without inspection for existing title plants -- application. (1) A title agent transacting the business of title insurance on October 1, 1985, may apply for a title plant permit without inspection by December 31, 1985, and may not transact the business of title insurance after July 1, 1986, unless he has received a temporary permit or certificate of authority from the commissioner.

(2) A title agent shall apply for a temporary permit, on forms provided by the commissioner, providing information reasonably required by the commissioner that shows that the agent maintains an adequate and complete title plant in the county where he intends to do business. The title insurer with whom the agent intends to do business must sign the application certifying that the agent is known to have a good reputation and is worthy of public trust and that the insurer knows of no fact or condition that would disqualify the agent from receiving the permit.

(3) If the commissioner denies an application for a permit without inspection, the applicant may request an inspection of his title plant and apply for a certificate of authority as provided in [section 17].

(4) A title agent who receives a title plant permit without inspection is not relieved of the requirement of

inspection upon sale or transfer of the title plant or as required by the commissioner under 33-1-402.

(5) A permit without inspection continues from the date issued until sale or other transfer of a plant, unless sooner revoked by the commissioner.

(6) After inspection, the commissioner may revoke a permit of a title plant found to be not in compliance, after a hearing held pursuant to this title.

Section 20. Section 33-2-108, MCA, is amended to read:

"33-2-108. Combinations of insuring powers. (1) Except as provided in subsections (2), (3), and (4) and [section 5], an insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

(2) A life insurer may also grant annuities but shall not be authorized to transact any other kind of insurance other than disability, except that if the insurer is otherwise qualified therefor, the commissioner shall continue to so authorize any life insurer which, immediately prior to January 1, 1961, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(3) A reciprocal insurer shall not transact life insurance.

(4) A title insurer shall be a stock insurer."

Section 21. Section 33-2-851, MCA, is amended to read:

"33-2-851. Special investments by title insurer. (1) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its ~~abstract~~ title plant, as defined in [section 2], and equipment and, with the commissioner's consent, in stock of abstract companies and of title agents as defined in [section 2]. ~~If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be prorated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance, but the capital so assigned to title insurance shall in no event be less than $100,000.~~

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under 33-2-517.

(3) Any such ~~abstract~~ title plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost."

Section 22. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required. (1) After completion

and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance;

(h) title insurance.

(4) Examination of an applicant for a solicitor's

license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation thereof refused by the commissioner, except that the provisions of this subsection (5)(b) do not apply to title agents, as defined in [section 2];

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers

applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

~~(g) title insurance agents;~~

~~(h)~~(g) mechanical breakdown insurance agents."

Section 23. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at a place in this state reasonably accessible to the applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion but at least once a month.

(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(5) The examination of a title agent, as defined in [section 2], must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 24. Section 33-17-1101, MCA, is amended to read:

"33-17-1101. Place of business -- display of license -- records. (1) Every agent shall have and maintain a place of business accessible to the public. Such place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof. Nothing in this section prohibits maintenance of such place of business in the licensee's place of residence.

(2) The license of the licensee and the license of each solicitor appointed by and representing the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions, except that title agents, as defined in [section 2], shall retain records as provided in [sections 6 and 15]."

NEW SECTION. Section 25. Repealer. Section 33-25-103, MCA, is repealed.

NEW SECTION. Section 26. Extension of authority. Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 27. Codification instruction. Sections 1 through 19 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 19.

NEW SECTION. Section 28. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. FNN184-85

F I S C A L N O T E

Form BD-15

In compliance with a written request received January 23 19 85 , there is hereby submitted a Fiscal Note for H.B. 338 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

House Bill 338 is an act to revise the law relating to title insurance. The proposed law provides for the licensing and regulation of title insurance agents, the examination of title insurance plants and the issuance of certificates of authority.

ASSUMPTIONS:

1. This bill will reduce the number of agents that are licensed for title insurance.
2. Additional revenue raised from title plant inspections cannot be determined until rulemaking is completed.
3. Requirements of the bill for inspections of title plants, examinations for licensing of title insurance agents, issuance of certificates and regulation of title insurance will require additional expenditures.

FISCAL IMPACT:

	Fiscal 1986		Fiscal 1987	
	Current Law	Proposed Law	Current Law	Proposed Law
Revenue	$ 7,000	$ 4,800	$ 7,000	$ 1,600
Expenditures				
FTE	.25	1.25	.25	1.25
Personal Services	$ 5,000	$32,008	$ 5,000	$32,525
Operating	2,000	18,660	2,000	7,860
Equipment	-0-	-0-	-0-	-0-
Total Expenditures	$ 7,000	$50,668	$ 7,000	$40,385
Net Effect to the General Fund	-0-	$45,868	-0-	$38,785

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 29, 1985

FN3:P/3

HB 338

(To be kept current -- post bills when entering being heard or leaving committee.)

Form CS-32

STATUS SHEET

49TH LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND LABOR

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
303	1-21	1-30	1-30		1-30				
306	1-21	2-4	2-4	2-4					
309	1-22	1-31/2-1 2-13		TABLED					
318	1-22		REREFERRED TO HUMAN SERVICES						
321	1-22	2-1	2-1			2-1			
329	1-22		REREFERRED TO JUDICIARY						
334	1-22	1-31/2-1	2-1			2-1			
338	1-22	1-31/2-1 2-12/2-18	2-18			2-18			
354	2-6	2-15/2-18	2-18	2-18					
360	1-22		REREFERRED TO JUDICIARY						
367	1-22	2-1	2-1	2-1					
371	1-23	2-4	2-4	2-4					
378	1-23	2-5	2-5	2-5					
387	1-23	2-7/2-12	2-7	2-7					
387	2-11	2-23	2-23	2-23	(REREFERRED)				
391	1-23	2-7	2-7		2-7				

Use a separate sheet for Senate, House Bills, and Resolutions

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 31, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on January 31, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL 334: Hearing commenced on House Bill 334. Representative Bud Gould, District #61, sponsor of the bill, stated that the purpose of this bill is to allow bar wholesalers to rent portable equipment for cooling and dispensing draft beer to retailers for use in catering off the premises. Representative Gould distributed to committee members a Statement of Intent which is attached hereto as Exhibit 1.

Proponent Roger Tippy, representing the Montana Wine and Beer Wholesalers Association, offered his support of House Bill 334 as written. Mr. Tippy distributed to committee members Exhibit 2, which shows twenty-seven events in Missoula when equipment was rented in 1984.

Proponent Harold Zachariasen, representing Earl's Distributing Inc. in Missoula, quoted prices for equipment being rented presently. A draft trailer with a thirty keg capacity would be rented at $25.00 per day. The self-contained picnic pumps and coolers are outdated and the sophisticated systems are needed to better service events.

Proponent Rick Day of the Department of Revenue offered his support of House Bill 334. Mr. Day explained his proposed amendment as shown on Exhibit 3 attached hereto. The changes would remove the need for additional regulations and eliminate the need for additional compliance work, added Mr. Day.

Representative Brandewie asked Mr. Tippy if he agreed to the amendments as proposed by the department. Mr. Tippy explained that the practice throughout the beer and wine industry is that a manufacturer not solicit retailers and thus the amendment is not necessary.

There being no further discussion by proponents or opponents all were excused by the chairman and the hearing on House Bill 334 was closed.

HOUSE BILL 309: Hearing commenced on House Bill 309. Representative Bob Gilbert, District #22, sponsor of the bill, explained that this bill would move from the Highway Patrol to the Public Service Commission the primary responsibility to enforce the motor carriers safety law. The Highway Patrol has numerous

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 334 was closed.

HOUSE BILL 338: Hearing commenced on House Bill 338. Representative Kelly Addy, District #94, sponsor of the bill explained that this bill would change the laws on title insurance. It provides a new body of law regulating title insurance, draws distinctions between title insurance policies and abstracts of title and amends existing law. Title insurance protects the largest investment most individuals will make. The county records can not be totally relied upon for establishing a chain of title, added Representative Addy. A Statement of Intent, attached as Exhibit 5 was distributed to committee members.

Proponent Richard Bach, representing the Montana Insurance Department, proposed three amendments that are attached hereto as Exhibit 6. Mr. Bach explained the amendments and supplied a Witness Statement that is attached hereto.

Proponent Gene Phillips of Kalispell, representing the Montana Land Title Association, offered his support of House Bill 338 and also the amendments as proposed by Mr. Bach of the insurance department.

Proponent Bill Gowen, President of the Montana Land Title Association and Helena Abstract and Title Company offered his support of the bill. Mr. Gowen distributed to committee members proposed amendments as shown on Exhibit 7 attached hereto.

Proponent Loren Solberg, representing County Guarantee Title in Kalispell, explained that it is necessary for title to be examined before issuing insurance and that it is important that a title plant be maintained.

Proponent Robert Mitchell of Boise, & Vice-pres. of Safeco Title Insurance, the most active underwriter in Montana, explained that it is costly to create and maintain a title plant. Claims may arise a long time after the issuance of a title policy and the policy holder is better served if the company is still in business. House Bill 338 would also insure the safety of funds while held by a title company. Mr. Mitchell supports House Bill 338 with the proposed amendments.

Proponent Robert Noe of Columbus and representing Stillwater Abstract Company and Carbon County Abstract and Title Company, suggested that on page 9, line 18, "or assigns" be deleted and on page 10, line 15, "any interest received on funds" be deleated.
Proponents John C. Smith of Denver and Vice-President of Stewart Title Guarantee, Norm Evilsizer of Minneapolis and

Vice-president of Minnesota Title Insurance Company, Terry Carmody of Helena, representing the Montana Association of Realtors, Rick Zanto of Fort Benton, representing Choteau County Abstract Company, Jack Johns of Great Falls, representing Mountain Title, Shelley Oertle of Hamilton, representing First Montana Title, Mike Kleese of Stevensville, representing 1st American Title and Brad Stratton of Bozeman, representing American Land Title Company, all offered their support of House Bill 338.

Opponent A. L. Craddock of Red Lodge, representing Carbon Title Guarantee, supplied written testimony which is attached hereto as Exhibits 8 and 9. Mr. Craddock also distributed Exhibit 10 to committee members.

Opponent Steve Strekall of Billings, representing American Title and Escrow, distributed to committee members Exhibit 11 attached hereto. Mr. Strekall explained that title insurance is risk elimination insurance and that risks are eliminated through examination. An agent is approved by an underwriter and House Bill 338 would move the responsibility from the underwriter to the state and thus eliminate competition in the title industry. An attorney would be prevented from writing a title opinion, added Mr. Strekall. He urged the committee to DO NOT PASS House Bill 338.

Opponent Teddy Annear of Bozeman, representing Teddy's Assist, stated that there are presently errors made by relying on title plants. A plant inspection is an unneeded expense, and by requiring all companies to have a title plant, smaller companies will be forced out of business and a monopoly will be created, explained Ms. Annear.

In closing, Representative Addy stated that laws are made to regulate those that don't know what they are doing. House Bill 338 would not be creating a monopoly, but a more professional industry with competent agents.

Representative Jones asked Mr. A. L. Craddock if this law would take away any rights of an attorney to perform title opinions, which was answered no.

Representative Jones asked Mr. Loren Solberg why agents need to be tested, and if this bill is enacted would it force all but one company per county out of business. Mr. Solberg explained that there are currently 700 licensed agents in the state, with testing requirements the figure would decrease to approximately 160 agents, and, no, this would not cause one company per county.

Representative Schultz asked Mr. Solberg the cost for starting a title plant. Mr. Solberg explained that it would vary from county to county depending on the size of the county and the number of transactions in the county with an average investment of approximately $80,000.00.

Representative Simon asked Representative Addy what problem is trying to be solved by House Bill 338. Representative Addy referred the question to Mr. Jack Johns who explained that a responsibility to the public is needed and that there are incompetent employees performing title examinations.

Representative Bachini asked Representative Addy if this will come under the Montana Insurance Commission and if they have the expertise to admister the test. Representative Addy answered yes to both questions.

Representative Bachini then asked Rich Back how many additional employees will be needed. Mr. Bach stated the commission will need to hire 1 full time employee. Representative Bachini asked Mr. Bach how many complaints have been filed with the insurance commission. Mr. Bach explained that there have not been any complaints filed.

There being no furthe r discussion by proponents or opponents all were excused by the chairman and the hearing on House Bill 338 was closed.

HOUSE BILL 450: Hearing commenced on House Bill 450. Representative Fred Thomas, District #62, sponsor of the bill stated that the bill would require the Division of Motor Vehicles to keep separate personal and commercial driving records of such persons to whom such distinctions are applicable. Information in the commercial record may not be used by an insurance company to rate the individual for personal insurance. For underwriting insurance of an employer, both personal and commercial driving records of each individual may be used. Representative Thomas explained that he has problems with this bill and would recommend that the committee TABLE House Bill 450.

There being no proponents or opponents to the bill, Representative Thomas was excused by the chairman and the hearing on House Bill 450 was closed.

ACTION ON HOUSE BILL 450: Representative Kitselman motioned that House Bill 450 be TABLED. Second was received and a unanimous vote resulted.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 11:00 a.m.

Rep. Bob Pavlovich,
Chairman

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 31, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

Exhibit 5
January 31, 1985
House Bill 338
Submitted by: Rep. Ad

49th Legislature LC 277

STATEMENT OF INTENT

_____ Bill No. 338 [LC 277]

A statement of intent is required for this bill because it grants rulemaking authority to the commissioner of insurance regarding the issuance of title insurance policies, the handling of escrow, settlement, closing or title indemnification accounts that are handled in conjunction with the issuance of title insurance policies, and the organization, operation, and inspection of title plants. The rules are intended to protect the interests of those insured by title insurance policies issued in this state by providing uniform standards and procedures in the conduct of business by title insurers and agents. The legislature recognizes the unique nature of title insurance and the public good to be derived from its regulation by the state. It is intended that the regulation be adaptable to changing needs and procedures in the industry and the marketplace.

Section 8 allows the commissioner to adopt rules that would permit a title insurer or title agent to not disclose certain matters affecting title on an owner's title policy. The commissioner is not required to adopt such rules. It is contemplated that such rules, if adopted, would exempt disclosure of matters that are not likely to create the possibility of a failure of title or matters for which there is a preponderance of evidence to show that the matter does not affect title to the

property in question; these matters include but are not limited to prejudgment attachments for which a final judgment was never entered or mortgages that have expired by operation of law.

Section 9 allows the commissioner to adopt rules pertaining to escrow, settlement, closing or title indemnification transactions. The commissioner is not required to adopt such rules. It is contemplated that such rules, if adopted, will establish procedures, in conformance with good business practices, that will assure the protection of the client in these situations.

Exhibit 6
January 31, 1985
House Bill 338
Submitted by: R. Bach

House Bill 338

Amendments Proposed by the Montana Insurance Department

1. Amend Section 2 Subsection (8) as follows:

(8)(a) "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

(i) buying or selling interests in real property;

(ii) making loans secured by interests in real property; or

(iii) acting as broker, agent, ~~or~~ representative or attorney of a person described in subsection (8)(a)(i) or (8)(a)(ii).

~~(b) "Producer of title business" does not include an attorney licensed to practice law in this state.~~

2. Amend Section 5 Subsection (1) as follows:

NEW SECTION. Section 5. Limitations on authority. (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. Any insurer authorized to transact any combination of kinds of insurance including title business under an existing certificate of authority may continue to do so until that certificate of authority is renewed effective June 1, 1986.

3. Add New Section between Section 24 and 25, renumbering Sections 25 through 28

Section 25. Section 33-17-1102, MCA, is amended to read:

33-17-1102. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. Except for title agents as defined in [Section 2], ~~If~~ if the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Title agents, as defined in [Section 2], shall comply with [Section 7].

~~(2)~~(3) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is, upon conviction, guilty of theft and shall be punished by law.

Exhibit 7
January 31, 1985
House Bill 338
Submitted by: Bill Gowen

AMENDMENTS TO HOUSE BILL NO. 338
REQUESTED BY THE MONTANA LAND TITLE ASSOCIATION

NEW SECTION. Section 6. Underwriting standards -- record retention. (1) A title insurer may not issue a title insurance policy unless it, its agent, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent may keep original evidence or may establish in the regular course of business a system of recording, copying or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, no title insurer or title agent may knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured ~~or assigns~~ arising thereunder.

NEW SECTION. Section 7. Escrow, closing, or settlement services -- title indemnification -- maintenance of accounts -- rules. (1) A title insurer or title agent may provide escrow, settlement, or closing services, or any combination thereof, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3).

(2) A title insurer or title agent shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title agent. A title insurer or agent may use such funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) pay any interest received on funds deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) A title agent must keep books of account, records and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner that the commissioner or his authorized representative may readily ascertain, under the authority of 33-1-402, whether the title agent has complied with all applicable provisions of this title.

NEW SECTION. Section 12. Prohibited practices -- referrals -- splitting charges -- exemptions. (1) Except as provided in subsection (2), no person may:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title agent; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agent ~~or franchise relationship~~ if:

(i) at or prior to the time of a referral a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range

of charges generally made by the title agent to which the person is referred; and

(ii) the person is not required to use a particular agent.

(b) The following arrangements are not a violation of subsection (2) (a) (ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser cho by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2) (a) (i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title agent for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

Exhibit 8
January 31, 1985
House Bill 338
Submitted by: A.L. Craddoc

HOUSE BILL 338

PROPOSED "MONTANA TITLE INSURANCE ACT

STATEMENT IN OPPOSITION AND SUGGESTED AMENDMENTS

On behalf of the many individuals who are both licensed Montana attorneys and licensed Montana title insurance agents, it is contended that the present law of the State of Montana relative to title insurance, insurance agents and the insurance industry in general are adequate to properly regulate the title insurance industry. In addition, there are adequate Federal and Montana laws governing consumer protection in general.

House Bill 338, the proposed "Montana Title Insurance Act" is another attempt, in a historical series of attempts, by the Montana Land Title Association to limit the title insurance agency business to its members alone who are usually the possessors and maintainers of the only "title plant" in the individual county of each member.

This proposed legislation does not spring from a serious need for consumer protection, and thus it is not sponsored or proposed by Ralph Nader or any other consumer group.

This legislation is proposed by the Montana Land Title Association, which has described itself as being "...comprised of various profit-seeking land title and abstracting concerns who are members..." thereof. See Paragraph 2, COMPLAINT, Montana Land Title Association v. First American Title and Escrow of Billings, Civil Action No. 65024, Yellowstone County District Court, a copy of which is attached hereto.

The motivation and goal of the Montana Land Title Association in the court case above cited and its motivation and goal in House Bill 338 proposed by it are not the products of concern for consumer protection but are the products of avarice and greed and the desire to entirely eliminate all competition

they now have or may have in the future.

Historically, under the law of the State of Montana, licensed Montana title insurance agents were usually either licensed Montana land title abstracters or licensed Montana attorneys at law.

By Section 16 of House Bill 338, the Montana Land Title Association is attempting to eliminate the licensed Montana attorney as a title insurance agent and from the business of title insurance by requiring that "no person may act as a title insurance agent and no title insurance agent may transact the business of title insurance in this state unless the agent maintains a title plant for which the commissioner has issued a certificate of authority..."

Those of us opposed to House Bill 338 and the position of the Montana Land Title Association believe that record title search and examination for the purpose of determining the marketability or insurability of a land title constitutes the practice of law and is solely within the educational and professional realm of the Montana licensed attorney.

However, we are willing to compromise, and seek only the amendment of the proposed House Bill 338 to truly provide for consumer protection by allowing the licensed attorney to continue to be licensed as a Montana title insurance agent without examination or the possession and maintenance of a title plant, thus insuring healty competition and a choice of agents to the Montana consumer.

With the above thoughts in mind, we hereby submit the following suggestions for the amendment of House Bill 338.

A. Delete from Section 2 the following:

(1) "Abstract," as abstracting does not constitute a part of the title insurance business.

(3) "Approved attorney," as the ability of a licensed Montana attorney to engage in the title insurance industry should not be limited to the discretion of a title insurer.

(12) (b) (iii) handling escrows, settlements, or closings; as this does

not constitute part of the title insurance business as contended by the Federal Trade Commission.

(12) (b) (vi) abstracting, searching, or examining titles; as the same does not constitute part of the business of insuring titles, as contended by the Federal Trade Commission.

(15) "Title plant" as the private maintenance thereof is not necessary to the conduct of the business of a title insurance agent who is educationally and professionally qualified to examine directly from the public records.

B. Delete Section 4 in its entirety, as abstracts of title do not constitute "title insurance."

C. Amend Section 6 (1) by deleting the first sentence thereof and substituting therefor the following:

(1) A title insurer may not issue a title insurance policy unless such policy is based upon an opinion of title certified in writing as of the date of the policy by an attorney duly authorized to practice law in this state, following a review by such attorney of pertinent title records or abstracts. (The remainder of (1) to be the same as the original.)

This Amendment is suggested for the reason that the non-attorney title agent is normally not educationally or professionally qualified to examine land titles and to certify as to the marketability or insurability thereof.

D. Delete Section 7 in its entirety, for the reason that escrow, closing or settlement services are not a part of the business of title insurance, as contended by the Federal Trade Commission.

E. Delete Section 8 in its entirety, as such regulatory power is not necessary to protect the public health, safety, or welfare from significant and discernible harm or damage, and thus this Section violates 2-8-101, Montana Code Annotated.

F. Delete Section 10 (b) for the reason that this language as stated in ambiguous and the escrow business is not a part of the title insurance industry as contended

by the Federal Trade Commission.

C. Delete Section 11, 12, 13 and 14 in their entirety, as these objectionable subjects and practices are adequately prohibited by the state insurance laws and the state and federal consumer protection laws.

H. Delete Section 16, 17, 18 and 19 in their entirety.

Amend Section 16 to read as follows:

Section 16. requirement--standards. No person may act as a title insurance agent and no title insurance agent may transact the business of title insurance in this state unless the agent is also a licensed Montana attorney at law or unless said agent bases the issuance of all title insurance policies issued by said agent upon the opinion of title certified in writing as of the date of the policy by an attorney duly authorized to practice law in this state, following a review by such attorney of pertinent title records or abstracts. (End of Section 16)

I. Alternatives to the above suggested Amendment of Section 16.

Amend Section 16 to read as follows:

Section 16. Title Plants--Requirement--Exception--Standards--Rules. (1) No person may act as a title insurance agent and no title insurance agent may transact the business of title insurance in this state unless:

(a) The agent maintains a title plant for which the commissioner has issued a certificate of authority or a permit without inspection under the provisions of [section 17 or 19],

or:

(b) The agent bases all policies of title insurance issued by such agent upon an opinion of title certified in writing as of the date of the policy by an attorney duly authorized to practice law in this state, following a review by such attorney of pertinent title records or abstracts.

(c) The provisions of subsections (1) (a), (2), (3) and (4) of this Section 16, and the provisions of Section 17, 18 and 19 of this act shall not apply to

title insurance agents licensed and operating under the provisions of subsection (b) of this Section 16.

(2) and following same as original text.

J. Amend Section 22 as follows:

(5) (b) Return language to original text by deleting ", except that the provisions of this subsection (5) (b) do not apply to title agents as defined in (section 2),"

(5) (g) ~~title-insurance-agents~~. Any individual lawfully licensed as a title insurance agent as of or immediately prior to January 1, 1985, and thereafter continuing to be so licensed;

(5) (h) mechanical breakdown insurance agents;

(5) (i) attorneys duly authorized to practice law in this state."

Respectfully submitted this 31st day of January, 1985.

A. L. Craddock
Licensed Montana Attorney
Licensed Montana Title Insurance Agent
2 North Broadway - The Pollard
P. O. Drawer 10
Red Lodge, Montana 59068

Telephone: 446-2603

IN THE DISTRICT COURT OF THE THIRTEENTH
JUDICIAL DISTRICT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF YELLOWSTONE

MONTANA LAND TITLE ASSOCIATION, a Montana nonprofit corporation,

Plaintiff,

vs.

FIRST AMERICAN TITLE AND ESCROW OF BILLINGS, a limited partnership doing business in the State of Montana, and FIRST AMERICA TITLE INSURANCE COMPANY, a California corporation doing business in the State of Montana,

Defendants.

No. 65024

COMPLAINT

Plaintiff alleges:

1. Plaintiff Montana Land Title Association is a nonprofit corporation incorporated under the laws of the State of Montana and has its principal place of business in Glendive, Montana; defendant First American Title and Escrow of Billings is a limited partnership in the State of Montana, having its principal place of business in Billings, Montana. Defendant First American Title Insurance Company is a California corporation, having its principal office located at 421 North Main Street, Santa Ana, California, and doing business as an underwriter for title insurance policies in the State of Montana.

2. Plaintiff Montana Land Title Association is comprised of various profit-seeking land title insurance and abstracting concerns who are members of said plaintiff. Each member of plaintiff Montana Land Title Association holds all licenses and/or certificates required by the laws of the State of Montana to transact business as title insurance and/or abstracting concerns.

3. Plaintiff Montana Land Title Association is organized to protect consumers of abstract concerns and title insurance concerns and the public generally from unlawful acts by title insurance

companies or abstracting companies. Plaintiff Montana Land Title Association is further organized for the purpose of protecting its members' reputations and protecting the reputation of abstracting concerns and title insurance concerns generally from unlawful acts of abstract concerns or title insurance concerns. Plaintiff Montana Land Title Association is further organized for the purpose of protecting its members' economic positions from the unlawful operation by a title insurance company without the necessary certificates and/or licenses required to transact business, as a title insurer, in the State of Montana.

4. Defendant First American Title and Escrow of Billings is currently issuing title insurance without basing such policies upon evidence of the condition of title in writing as of the date of such policy, certified by some person, firm or corporation who holds a Certificate of Authority issued under Section 66-2111, R.C.M., 1947. Further, defendant First American Title and Escrow of Billings is currently issuing title insurance policies without issuing such policies through a licensed title insurance agent who was so licensed and regularly procuring title insurance policies upon the basis of the opinion of an attorney, duly authorized to practice law in the State of Montana, upon the effective date of Section 40-4601, R.C.M, 1947 -- July 1, 1961. Defendant First American Title Insurance Company is currently underwriting the policies referred to herein.

5. By the actions set forth in paragraph four of this complaint, defendant First American Title and Escrow of Billings is issuing title insurance policies in violation of Section 40-4601, R.C.M., 1947, and defendant First American Title Insurance Company is underwriting these policies.

6. As a result of defendant First American Title and Escrow of Billing's violation of Section 40-4601, R.C.M., 1947 and defendant First American Title Insurance Company's acts of

underwriting said policies, the members of plaintiff Montana Land Title Association have suffered material loss of business to the illegal operation of the defendants.

7. There exists no adequate remedy at law under the Revised Codes of Montana for the loss of business resulting from defendants' illegal operation.

WHEREFORE, PLAINTIFF PRAYS JUDGMENT AGAINST THE DEFENDANTS AS FOLLOWS:

1. That defendant First American Title and Escrow of Billings be temporarily enjoined from issuing title insurance policies in violation of Section 40-4601, R.C.M., 1947, pending the outcome of this litigation; and further be perpetually enjoined from issuing title insurance until it complies with the requirements of Section 40-4601, R.C.M., 1947. Further, that defendant First American Title Insurance Company be temporarily enjoined from underwriting title insurance policies which were issued by defendant First American Title and Escrow of Billings in violation of Section 40-4601, R.C.M., 1947 pending the outcome of this litigation; and further be perpetually enjoined from underwriting title insurance policies issued by First American Title and Escrow of Billings until defendant First American Title and Escrow of Billings complies with the requirements of Section 40-4601, R.C.M., 1947.

2. That judgment be rendered against defendants First American Title and Escrow of Billings and First American Title Insurance Company for plaintiff's costs and disbursements in this action and its reasonable attorney's fees.

3. That plaintiff have such other and further relief as to the court may seem equitable and proper.

DATED this 15th day of August, 1974.

CROWLEY, KILBOURNE, HAUGHEY,
HANSON & GALLAGHER

By: Stephen H. Foster
P. O. Box 2529
Billings, Montana 59103
Attorneys for Plaintiff

CLERK OF DISTRICT COURT
HARDIN, MONTANA
1975 SEP 24 PM 3:11
FILED
BY _____ DEPUTY

(30)

IN THE DISTRICT COURT OF THE THIRTEENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF YELLOWSTONE

MONTANA LAND TITLE ASSOCIATION, A Montana nonprofit corporation,

Plaintiff,

-vs-

FIRST AMERICAN TITLE AND ESCROW OF BILLINGS, a limited partnership doing business in the State of Montana, and FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation doing business in the State of Montana,

Defendants.

No. 65024

10 00

SEP - 4 PAID

JUDGMENT

Pursuant to the remittitur from the Supreme Court of the State of Montana, judgment is hereby rendered in favor of the defendants on their Motion to Dismiss.

The Temporary Restraining Order heretofore made is hereby dismissed, and the Complaint of the plaintiff is likewise dismissed.

Defendants are hereby allowed their costs and disbursements.

DATED this 24 day of September, 1975.

DISTRICT JUDGE

MF 76 FR161

ANDERSON, SYMMES, FORBES, PEETE & BROWN
900 TRANSWESTERN BUILDING
BILLINGS, MONTANA 59101

MONTANA LAND TITLE ASSOCIATION, a Montana Nonprofit Corporation, Plaintiff and Respondent,

v.

FIRST AMERICAN TITLE and Escrow of Billings et al., Defendants and Appellants.

No. 12942.

Supreme Court of Montana.

Submitted June 18, 1975.

Decided Aug. 25, 1975.

Rehearing Denied Sept. 12, 1975.

The defendants appealed from a judgment of the Thirteenth District Court, Yellowstone County, Robert H. Wilson, J., which permanently enjoined defendants from issuing title insurance policies subject to certain exceptions. The Supreme Court, James T. Harrison, C. J., held that the statute which discriminates in favor of those agents who were writing title insurance on the basis of legal opinions on July 1, 1961, and against those licensed agents who later attempted to do so violates the guarantee of equal protection of the laws and is unconstitutional.

Reversed and remanded with direction.

1. Constitutional Law ⇐211

The constitutional guarantee of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in liabilities imposed. Const.1972, art. 2, § 17; U.S.C.A. Const. Amend. 14.

2. Constitutional Law ⇐208(1)

Even though there may be classifications provided for by the laws, one of the essential requirements is that they shall not be capricious or arbitrary, and that they be reasonable and have a rational basis. Const.1972, art. 2, § 17; U.S.C.A.Const. Amend. 14.

3. Constitutional Law ⇐211

Equal protection of the laws means subjection to equal laws applying alike to all in the same situation; while reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based on some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed; such classification cannot be arbitrarily made without any substantial basis; arbitrary selection cannot be justified by calling it classification. Const.1972, art. 2, § 17; U.S.C.A.Const. Amend. 14.

4. Constitutional Law ⇐240(2)
Insurance ⇐4.1

The statute providing that title insurance companies may issue title policies on basis of legal opinion of a duly licensed Montana attorney if they were doing so regularly on July 1, 1961, the effective date of the statute, but that companies who were not doing so regularly on such date cannot issue title insurance based upon opinion of a duly licensed attorney discriminates in favor of those agents who were writing title insurance on basis of legal opinions on July 1, 1961, and against those licensed agents who later attempted to do so, and hence violates the guarantee of equal protection of the laws and is unconstitutional. R.C.M.1947, § 40-4601; Const.1972, art. 2, § 17; U.S.C.A.Const. Amend. 14.

Anderson, Symmes, Forbes, Peete & Brown, Billings, Benjamin N. Forbes argued, Billings, for appellants.

Crowley, Kilbourne, Haughey, Hanson & Gallagher, Billings, Stephen H. Foster argued, Billings, for respondent.

JAMES T. HARRISON, Chief Justice.

This is an appeal by defendants from a judgment entered in the district court, Yellowstone County, on December 16, 1974; which permanently enjoined defendants from issuing title insurance policies as to property in this state, subject to certain exceptions. The injunction was suspended during the pendency of this appeal.

FTC charges title-search prices fixed

From Gazette Staff
and News Service Reports

WASHINGTON D.C. — The Federal Trade Commission this week charged that six major title insurance firms illegally fixed prices on title search and examinations and on settlement services in Montana, Wyoming and 11 other states.

The commission charged that the companies used private ratings bureaus to fix prices for services provided by the insurance firms to real-estate purchasers, thus restraining competition in this business.

Title insurance protects property owners from any prior claims that may exist against real estate they buy, and before the insurance is issued the firms conduct a title search to make sure the seller has clear title to the property.

The ratings bureaus unlawfully fixed fees for those searches, the FTC charged, and also for other services provided at property settlements.

But, an attorney for one of the companies named in the complaint said the searches are a proper part of doing business.

"Our research holds that title search is one of the functions of insurance," said Richard Klavin, associate counsel for Safeco Title Insurance Co. of Los Angeles. "We maintain that what we did was not improper."

Wyoming Insurance Commissioner Robert W. Schrader said, while he hasn't seen the FTC's complaint, it appears the commission is attempting to make inroads into state regulation of insurance companies.

Wyoming law allows title-insurance companies to consult advisory bureaus, he said.

In addition to Safeco, the complaint named Ticor Title Insurance Co., of Los Angeles; Chicago Title Insurance Insurance Co., Chicago; First American Title Insurance Co., Santa Ana, Calif.; Lawyers Title Insurance Co., Richmond, Va.; and Stewart Title Guarantee Co., Galveston, Texas.

All six companies are registered to do business in Montana. All but Safeco Title of Los Angeles are registered in Wyoming.

The FTC staff says the six firms accounted for more than half of the title-insurance business nationwide in 1983, with more than $900 million in direct premiums written.

The complaint does not concern sales of title insurance itself, as the FTC is banned by law from investigating or regulating the insurance industry. However, the commission concluded that title search and examinations, and settlement assistance provided by the firms, are not actually part of the insurance business and so could face scrutiny by the commission.

Title search and examination services identify and describe the ownership of a particular piece of property as well as any actual or potential claims on or interests in the property.

SPECIMEN

TICOR TITLE INSURANCE

Policy of Title Insurance

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, TICOR TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorney's fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated herein;

2. Any defect in or lien or encumbrance on such title;

3. Lack of a right of access to and from the land; or

4. Unmarketability of such title;

and in addition, if a mortgage is referred to in Schedule A as the insured mortgage, by reason of:

5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon

a. usury, or
b. any consumer credit protection or truth in lending law;

6. The priority of any lien or encumbrance over the lien of the insured mortgage;

7. Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance; or

8. The invalidity or unenforceability of any assignment, shown in Schedule A, of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

This policy shall not be valid or binding until countersigned below by a validating signatory of the Company.

TICOR TITLE INSURANCE COMPANY

By Gerald L. Lyon President

Attest Erich E. Erlach Secretary

Countersigned:

By _____

Validating Signatory

Exhibit 10
January 31, 1985
House Bill 338
Submitted by: A. L. Craddock

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

DOCKET NO. 9190

IN THE MATTER OF:

TITLE INSURANCE

COMPLAINT

FTC 4-524

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of TICOR TITLE INSURANCE COMPANY, a corporation, CHICAGO TITLE INSURANCE COMPANY, a corporation, SAFECO TITLE INSURANCE COMPANY, a corporation, FIRST AMERICAN TITLE INSURANCE COMPANY, a corporation, LAWYERS TITLE INSURANCE CORPORATION, a corporation, and STEWART TITLE GUARANTY COMPANY, a corporation.	DOCKET NO. 9190

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 et seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

DEFINITIONS

Paragraph 1. The following definitions shall apply in this complaint:

a. "Title search and examination services" means all activities which are designed to identify and describe the ownership of a particular parcel of real property as well as any other actual or potential rights to, encumbrances on, or interests in the property.

b. "Settlement services" means those services related to the closing of a real estate transaction, including but not limited to those services performed in connection with or in supervision of the execution, delivery or recording of transfer and lien documents, or the disbursement of funds.

RESPONDENTS

Paragraph 2. Respondent Ticor Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 6300 Wilshire Boulevard, Los Angeles, California 90048.

Paragraph 3. Respondent Chicago Title Insurance Company is a corporation organized under the laws of the State of Missouri, with its principal place of business at 111 W. Washington Street, Chicago, Illinois 60602.

Paragraph 4. Respondent Safeco Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 13640 Roscoe Boulevard, Los Angeles, California 91409.

Paragraph 5. Respondent First American Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 114 East 5th Street, Santa Ana, California 92701.

Paragraph 6. Respondent Lawyers Title Insurance Corporation is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business at 6630 West Broad Street, Richmond, Virginia 23230.

Paragraph 7. Respondent Stewart Title Guaranty Company is a corporation organized under the laws of the State of Texas, with its principal offices at Stewart Building, Galveston, Texas 77550.

JURISDICTION

Paragraph 8. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce within the meaning of the Federal Trade Commission Act.

Paragraph 9. Title search and examination services do not constitute the "business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

Paragraph 10. Settlement services do not constitute the "business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

ANTICOMPETITIVE ACTS AND PRACTICES

Paragraph 11. Respondents have agreed on the prices to be charged for title search and examination services or settlement services through rating bureaus in various states. Examples of states in which one or more of the Respondents have fixed prices with other Respondents or other competitors for all or part of their search and examination services or settlement services are Arizona, Connecticut, Idaho, Louisiana, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Wisconsin and Wyoming.

ANTICOMPETITIVE EFFECTS

Paragraph 12. As a result of the aforesaid acts and practices, competition in the sale of title search and examination services or settlement services has been restrained in various states.

Paragraph 13. The aforesaid acts and practices therefore constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 7th day of Jan, A.D., 1985, issues its complaint against said respondents.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the day of 20thA.D.,Feb85, at 10am o'clock is hereby fixed as the time and Federal Trade Commission Offices, The Gelman Building, 2120 L Street, N.W., Washington, D.C. 20037
as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceeding in this matter that the Respondents have violated Section 5 of the Federal Trade Commission Act as alleged in the Complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Rescinding in all respects all agreements which eliminate or restrict competition between and among Respondents and between Respondents and other competitors in the sale of title search and examination services or settlement services.

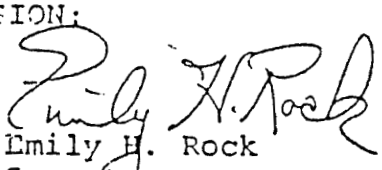
2. Prohibiting each of the Respondents in the future from entering into or maintaining any agreement which eliminates or restricts competition between and among themselves or with other competitors in the sale of search and examination services or settlement services.

3. Requiring Respondents, if they subsequently fix prices on the "business of insurance," not to consider expenses that are attributable, directly or indirectly, to search and examination services or settlement services; and in so ordering, the Commission may require that Respondents disclose the method used to allocate costs shared by insurance and noninsurance functions.

4. Requiring Respondents to file compliance reports with the Commission and to give prior notice of any changes in corporate form or organization which would affect compliance obligations under the order entered for a period of ten (10) years.

5. Publication of order to sales personnel and state insurance commissioners.

BY DIRECTION OF THE COMMISSION:



SEAL:

Emily H. Rock
Secretary

ISSUED: January 7, 1985

Exhibit 11, 1/31/85, HB 338
Submitted by:
Steve Strekall

HIDDEN DEFECTS IN TITLE —HOW MANY?

Opinions have varied as to the number of possible hidden defects in real estate titles. The most extensive list which we have found includes the following fifty-five clouds on title:

1. False impersonation of the true owner of the land or of his consort;
2. Forged deeds, releases of mortgages and other instruments;
3. Instruments executed under fabricated or expired powers of attorney (death or insanity of principal);
4. Deeds apparently valid but actually delivered after death of grantor;
5. Deeds to or from corporations before incorporation or after surrender or forfeiture of charter;
6. Undisclosed heirs;
7. Misinterpretation of wills, deeds and other instruments;
8. Deeds by persons of unsound mind;
9. Deeds by minors;
10. Deeds by aliens;
11. Deeds by persons apparently single but actually married;
12. Birth or adoption of children after date of will;
13. Children living at date of will but not mentioned therein;
14. Mistakes in recording legal documents (incorrect indexing, errors and omissions in transcribing and failure to record or preserve original instruments);
15. Want of jurisdiction of persons in judicial proceedings;
16. Discovery of will of apparent intestate;
17. Discovery of later will after probate of first will;
18. Federal estate and gift tax liens;
19. State inheritance and gift tax liens;
20. Capacity of foreign personal representatives and trustees to act;
21. Failure to include necessary parties in judicial proceedings;
22. Claims of creditors against property conveyed by heirs or devisees within prescribed period after owner's death;
23. Deeds absolute on their faces but which are held to be equitable mortgages;
24. Deeds in lieu of foreclosure set aside as being given under duress;
25. Ultra vires deed given under falsified corporate resolution;
26. Outstanding prescriptive rights not of record and not disclosed by survey;
27. Conveyances and proceedings affecting rights of servicemen protected by Soldiers and Sailors Civil Relief Act;
28. Deed of property recited to be separate property of grantor which is in fact community property;
29. Errors in tax records (for example, listing payment against wrong property);
30. Deed from bigamous couple—prior existing marriage in another jurisdiction;
31. Deed from convicted felon;
32. Conveyance by heir, devisee or survivor of a joint estate who murdered the decedent;
33. Defective acknowledgement due to lack of authority of notary (acknowledgement taken before commission or after expiration of commission);
34. Federal condemnation without filing of notice (federal law does not require filing of notice of taking in local recording office);
35. Rights under financing statements filed under Uniform Commercial Code in the name of the debtor who may not be the owner of the property;
36. Record easement, but erroneous ancient location of pipe or sewer line which does not follow route of granted easement;
37. Demolition liens where city demolishes building under statutory authority which are not recorded or are not recorded against the true owner;
38. Descriptions apparently but not actually adequate;
39. Fraudulent charges in existing records by persons other than recording officials. Changes in record by recording official without authority upon oral request or upon being presented with instrument changed after execution and recordation;
40. Ineffective waiver of tax liens by tax or other government authorities repudiated later by successors;
41. Corporation franchise taxes as lien on all corporate assets, notice of which does not have to be recorded in the local recording office;
42. Wills revoked by marriage after execution when marriage not contemplated by terms of will;
43. Special assessment where they become lien upon passage of resolution and before recordation or commencement of improvements for which assessed;
44. Interest arising by deeds to fictitious characters to conceal illegal activities on the premises;
45. Erroneous reports furnished by tax officials but not binding on municipality;
46. Administration of estates and probate of wills of persons absent but not deceased;
47. Undisclosed divorce of spouse who conveys as sole heir of deceased consort;
48. Marital rights of spouse, purportedly but not legally divorced;
49. Tax homestead exemptions set aside as fraudulently claimed;
50. Break in chain of title beyond period of examination of public records where running of adverse possession statute has been suspended (true owner is incompetent, absent or incarcerated or title is held by the sovereign);
51. Deed from trustees of purported business trust which is in fact a partnership or joint stock association;
52. Deed of executor under nonintervention will when order of solvency has been fraudulently procured or entered;
53. Deed from record owner who has sold property to another purchaser on unrecorded land contract with the purchaser having taken possession of premises;
54. Void conveyances in violation of public policy, such as payment of gambling debt, payment for contract to commit crime or conveyance made in restraint of trade; and
55. Duress in execution of instruments.

ABA LTG-F Newsletter-August, 1978.

APPRAISALS OF STOCK

FOR
CLOSELY HELD COMPANIES

- EMPLOYEE STOCK OWNERSHIP PLANS (ESOTS)
- CORPORATE REORGANIZATIONS
- ESTATE AND GIFT TAXES

BACKED BY EXPERT TESTIMONY

CONTACT
WILLIAM K. SCHROFF
CORPORATE FINANCE DEPT.

R.G. DICKINSON & CO.

LAW BRIEF PRINTING

Are you faced with a short deadline?

Give us a call. It may be we can help you.

We make no extra charge for emergency printing.

After all, we are Iowa's Largest Brief Printers and have the facilities to handle a large volume of printing.

THE LAW BRIEF COMPANY
Box 366

WITNESS STATEMENT

NAME Terry Cannady BILL NO. HB 33

ADDRESS 910 Helena Ave Helena, MT DATE 1/31/85

WHOM DO YOU REPRESENT? REALTORS

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Richard E. Bach BILL NO. H. 337

ADDRESS MT. Insurance Dept., Helena DATE _____

WHOM DO YOU REPRESENT? See Above

SUPPORT ✓ (with amendment) OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mont. Ins. Dept. supports this Bill As Amended because of the present lack of legislation regulating this industry. The bill is derived from the National Assoc. of ~~Ins~~ Insurance Commissioners' Model Title Insurance Bill, and would allow for greater consumer protection while providing the industry set guidelines under which they may operate.

February 3, 1985

House Business & Labor Committee
Main Capitol
Helena, MT 59620

RE: House Bill 338 - Teddy Annear personally appeared at committee hearing January 31, 1985 and this is the prepared statement requested.

I'm Teddy Annear from Bozeman, Montana. I own and operate my own escrow company and have just recently started a separate title company.

I have had experience working with and in title companies; courthouse as a deputy assessor; and in lending institutions. I believe I am in a unique position to give an opinion on this house bill 338, as for the past two years I have done real estate closings using various title companies, all of which have plants.

I have taken time away from my business today to appear before this committee to oppose "house bill 338".

In this time of deregulation, here is an industry requesting to be regulated! Please take time to ask yourself why! ! Read their bill carefully. Title insurance is an unusual and often times misunderstood profession.

Presently the substantial insurance companies apply to conduct business in Montana. Upon approval, it becomes their responsibility to choose agents and they bear the responsibility of the agents actions. As long as an agent is acting for an insurace company, the customer is protected and if an ex-agent falsely states he is acting for an insurance company, he faces civil action - - - which is what this bill proposes - - - but requests the commissioner to accept the burden.

Title Insurance is described as an examination of public records. This bill proposes all agents have a plant. I strongly oppose this for the following reasons:

1. Presently many errors are made due to agents relying too heavily on their plants; and in a rush do not show lien or mortgage releases, or worse yet not showing new liens and mortgages.

2. In various areas of the state, attorneys and other agents are quite adequate in examining from courthouse records.

Another portion of this bill indicates the commission will establish plant standards. How will the commission establish these standards? I for one intend to use new technology and see this as a drawback in serving the public quickly and accurately.

The bill also states that the commission will appoint representatives to examine such plants and the agent will pay for such an examination. I see this as an unneeded expense to

the agent, because it is virtually impossible for someone to find errors in title plants. Also, since this is proposed, people will be hired to set standards, etc., and I believe tax payers will pay the unnecessary burdens.

Briefly opposing other portions of the bill: Upon careful review, you'll note:

A. Very few can qualify to own a plant because they are limited not only by their occupation, but also that of their mother, brother, child or any other associate.

B. Section six reads "financial interest" means a legal or beneficial interest that entitles the holder directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held. In a small business, such as my own, that would include all employees.

My last, but certainly not final objection to this bill is "objection to an interest bearing trust account". As a sole propriator, I was advised by my banker to have such an account. I pay tax on such interest earned as it's considered income. None other than a sole propriator can have such an account, and as a sole propriator, you are less likely to do anything wrong as their are no corporate laws to hide behind. Not only is a sole propriators business in jeopardy, in case of error, but also everything he owns, home, family, etc. Therefore, I am very careful to handle my business properly. Upon closing a transaction, to allow enough time for proper handling of recording, etc., all disbursements are handled within 24 hours, generally less. Therefore, you can see that interest earned does not belong to buyer, since he received property on payment, nor seller, since he receives funds immediately on transfer of property. The interest I earn, is on the time it takes the check to clear the banks. Without this interest bearing account I would be unable to compete today, as title companies keep the closing fee low to keep out competition, though they obviously can't handle all of the business to the customers satisfaction. They are able to charge such low fees because they are compensated by the title insurance fees.

I have a growing business because customers are pleased with the unusual quick handling of their transaction. A buyer is able to get in a home more quickly and a seller pays less interest on loan pay-offs.

I object to other portions of this bill also, which will be voiced, if the bill continues further.

I hope after your careful review, you will see thru the voiced intent of this bill and recognize the true intention.

Sincerely,

Teddy Annear

TA/bgm

Theodora Annear

We the undersigned petition the House Business and Labor Committee to table house bill #338 for the following reasons:

1 - There are already laws that can handle disbutes in the title industry or any other industry.

2 - The commissioner is unfamiliar with such handlings, therefore hurting the citizens as follows:

a - Costing the taxpayer money for office education, monitoring and enforcement and/or

b - Disregarding the rights of the citizens to fair competion by allowing someone from the title industry to review and approve confidential contract and operating proposals.

Attempting to monitor ethics is ideal but impossible. This can cost the taxpayer a fortune with no results.

Dated this 6th day of February, 1985.

Ronda Rukter

Bruce Olson LPN

Dean Reuter

Cindy Jacobs

Norma A. Nixon

Vicky J Tong

Marsha White

Colleen Costello

CARBON TITLE GUARANTY

2 NORTH BROADWAY — THE POLLARD
P. O. DRAWER 10 — RED LODGE, MONTANA 59068
406-446-2603

February 3, 1985

Montana House of Representatives
Business and Labor Committee
Hon. Bob Pavlovich, Chairman
State Capitol Building
Capitol Station
Helena, Montana 59620

Re: House Bill 338
Montana Title Insurance Act

Dear Chairman Pavlovich and Committee Members:

I wish to thank you for the opportunity to be heard in opposition to House Bill 338 at the hearing thereon held January 31, 1985, and for the courtesy extended to me and my wife while in attendance.

From the nature of the questions asked after the close of the testimony by some members of the committee and the answers thereto from the proponents of the bill, it occurred to me that some misconceptions pertaining thereto had crept into the proceedings.

Therefore, I humbly submit the following observations in an attempt to claify these points and respectfully request that you give them your earnest attention and consideration.

The most serious unanswered questions left hanging in abeyance were "What is the purpose of the proposed legislation?" "What social ills are to be cured--what evils banished--by House Bill 338?"

During the presentation of testimony by the proponents, not once was any fact, let alone proof, of dire need or necessity for such litigation uttered by the witnesses.

During the questioning of witness Rick Bach, a proponent of the bill from the office of the Commissioner of Insurance, it was conclusively proved that there were not now, nor had there been in the past, any consumer complaints relative to title insurance agents or the title insurance industry made to the office of the Commissioner of Insurance or by that office to the Attorney General for prosecution or litigation.

This then gives rise to the more serious, weighty and deciding question, "Have the proponents of House Bill 338 presented conclusive evidence that indicates the necessity for the exercise of the state's police power in the regulation and control of title insurance agents and the title insurance business in the State of Montana?"

Those of us opposed to the bill respectfully submit that the answer to this question is a resounding "No!"

We further suggest with gravity and sincerity that the action of this honorable committee relative to House Bill 338 will put to the test whether the statement of legislative intent expressed so nobly in the strong and forceful words set forth in Title 2, Chapter 8, Section 101, Montana Code Annotated, a portion of which is hereinafter quoted, can be translated by this committee into rightful and honest action or whether these words will remain forgotten--only hollow utterances without meaning or effect, lying dormant and pressed between the pages of a dusty book.

Thereofore, we humbly ask that as you deliberate this important matter, you remain mindful of the following commandments:

"2-8-101 (2) (c) Montana Code Annotated. No profession, occupation, business, industry or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose."

"2-8-101 (2) (e) Montana Code Annotated. The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversly affect the competitive market."

With the above in mind, we submit that the cost of building a "title plant" in today's market will approach from 43 cents to 47 cents a recorded document, which includes the cost of material, labor, indexing, microfilming, etc.

With over 1,350,000 recorded documents in Yellowstone County, the cost of building a new title plant there would exceed $585,500.00. In Carbon or Stillwater Counties, the cost would approximate $110,000.00.

Such costs are economically unfeasible from a business standpoint and constitute an impenetrable barrier to future competition to those in possession of existing and ancient abstract plants compiled over a period of 50 to 75 years at a much lesser cost.

The question then arises, "Is a 'title plant' absolutely necessary to the proper and accurate conduct of a title insurance agent?"

Again, the answer is a resounding "No!"

From the inception of the title insurance industry in the State of Montana in the 1950s to the present time, title agents, attorney and non-attorney alike, have been legally issuing policies of title insurance based on the opinion of a licensed Montana attorney as to the condition of the title following a review by such attorney of pertinent title records, whether such records are the public, courthouse records or privately maintained duplicates thereof.

The proponents of the bill cite State ex rel. Freeman v. Abstracters' Board of Examiners, which was decided by the Montana Supreme Court on May 9, 1935, a half century ago, as authority for the proposition that in the year 1985 and years following, there is an indisputable need for an "abstract" or "title plant" privately maintained by an agent issuring title insurance.

This proposition or contention cannot be supported in this day and age.

On May 9, 1935, the "Abstracters' Law" had barely been in existence 5 years. it is to be kept in mind that this law was proposed to the legislature by the same organization that is now proposing the adoption of House Bill 338.

At that time, due to relatively primitive methods of record keeping and reproduction, a privately maintained "abstract plant" was perhaps superior to some less sophisticated county courhouse systems.

With our present day methods of rapid reproduction of record documents and the extensive use of electronic devises in communications and record keeping, the antiquated need for "abstract" or "title plants" no longer exist.

This fact was recognized by the Supreme Court of the State of Montana in its holding in the 1975 case of Montana Land Title Association v. First American Title and Escrow of Billings, where it held unconstitutional the law that prevented the issuance of a policy of title insurance on the basis of an opinion of title by a licensed Montana attorney after the review of the pertinent title records, public or private, without the maintenance of an abstracting plant as required by the "Abstracters' Law."

This fact was further recognized by the Legislature of the State of Montana, when, on July 1, 1979, it wisely abolished the "Board of Abstracters" and on May 1, 1981, it wisely repealed the entire "Abstracters' Law" including the law requiring the maintenance of an abstracting plant.

It has not been demonstrated or proven by the proponents of House Bill 338 that such actions by the Montana Supreme Court and the Montana Legislature were detrimental to the public health, safety or welfare or to the consumer in particular. Therefore, the present contention of the Montana Land Title Association is shown to be baseless.

We who oppose the adoption of House Bill 338 would further point out that to limit title agent licenses (by the economic barrier of the requirement of a "title plant" as a prerequisite to the licensing of a title insurance agent) to slightly more than 50 members of the Montana Land Title Association would be unconstitutionally discriminatory and subject to nullification by the Supreme Court of the State of Montana.

Furthermore, ponder the dilemma presented by the counties of Treasure and Garfield where we are informed that no title plants presently exist.

Lastly, we believe that the proponents have fostered the misconception that House Bill 338 affects only "abstracters" and "attorneys" as possible licensed title insurance agents.

Under the existing law in the State of Montana as the same relates to title insurance agents, any Montana citizen or business person, non-attorney as well as attorney, otherwise qualified as to financial ability, integrity, experience and knowledge, may be licensed as a Montana title insurance agent upon the application of that person after appointment by a qualified title insurance underwriter as its agent, and may thereafter issues policies of title insurance based on the opinion of title by a licensed Montana attorney after a review of pertinent title records, public or private.

Thus, the battle line is not drawn between the Montana Land Title Association members and the Montana attorneys, but is drawn between the citizens of the State of Montana as a whole and the relatively few members of the Montana Land Title Association.

If you should desire to direct any further questions to me relative to our opposition viewpoint, please dial me direct--collect at 0-446-2603.

Very truly yours,

A. L. Craddock
Attorney at Law

CARBON TITLE GUARANTY

2 NORTH BROADWAY -- THE POLLARD
P. O. DRAWER 10 -- RED LODGE, MONTANA 59068
406-446-2603

February 3, 1985

Montana House of Representatives
Business and Labor Committee
Hon. Bob Pavlovich, Chairman
State Capitol Building
Capitol Station
Helena, Montana 59620

Re: House Bill 338
Montana Title Insurance Act

Dear Chairman Pavlovich and Committee Members:

I wish to thank you for the opportunity to be heard in opposition to House Bill 338 at the hearing thereon held January 31, 1985, and for the courtesy extended to me and my wife while in attendance.

From the nature of the questions asked after the close of the testimony by some members of the committee and the answers thereto from the proponents of the bill, it occurred to me that some misconceptions pertaining thereto had crept into the proceedings.

Therefore, I humbly submit the following observations in an attempt to claify these points and respectfully request that you give them your earnest attention and consideration.

The most serious unanswered questions left hanging in abeyance were "What is the purpose of the proposed legislation?" "What social ills are to be cured--what evils banished--by House Bill 338?"

During the presentation of testimony by the proponents, not once was any fact, let alone proof, of dire need or necessity for such litigation uttered by the witnesses.

During the questioning of witness Rick Bach, a proponent of the bill from the office of the Commissioner of Insurance, it was conclusively proved that there were not now, nor had there been in the past, any consumer complaints relative to title insurance agents or the title insurance industry made to the office of the Commissioner of Insurance or by that office to the Attorney General for prosecution or litigation.

This then gives rise to the more serious, weighty and deciding question, "Have the proponents of House Bill 338 presented conclusive evidence that indicates the necessity for the exercise of the state's police power in the regulation and control of title insurance agents and the title insurance business in the State of Montana?"

Those of us opposed to the bill respectfully submit that the answer to this question is a resounding "No!"

We further suggest with gravity and sincerity that the action of this honorable committee relative to House Bill 338 will put to the test whether the statement of legislative intent expressed so nobly in the strong and forceful words set forth in Title 2, Chapter 8, Section 101, Montana Code Annotated, a portion of which is hereinafter quoted, can be translated by this committee into rightful and honest action or whether these words will remain forgotten--only hollow utterances without meaning or effect, lying dormant and pressed between the pages of a dusty book.

Thereofore, we humbly ask that as you deliberate this important matter, you remain mindful of the following commandments:

"2-8-101 (2) (c) Montana Code Annotated. No profession, occupation, business, industry or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose."

"2-8-101 (2) (e) Montana Code Annotated. The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversly affect the competitive market."

With the above in mind, we submit that the cost of building a "title plant" in today's market will approach from 43 cents to 47 cents a recorded document, which includes the cost of material, labor, indexing, microfilming, etc.

With over 1,350,000 recorded documents in Yellowstone County, the cost of building a new title plant there would exceed $585,500.00. In Carbon or Stillwater Counties, the cost would approximate $110,000.00.

Such costs are economically unfeasible from a business standpoint and constitute an impenetrable barrier to future competition to those in possession of existing and ancient abstract plants compiled over a period of 50 to 75 years at a much lesser cost.

The question then arises, "Is a 'title plant' absolutely necessary to the proper and accurate conduct of a title insurance agent?"

Again, the answer is a resounding "No!"

From the inception of the title insurance industry in the State of Montana in the 1950s to the present time, title agents, attorney and non-attorney alike, have been legally issuing policies of title insurance based on the opinion of a licensed Montana attorney as to the condition of the title following a review by such attorney of pertinent title records, whether such records are the public, courthouse records or privately maintained duplicates thereof.

The proponents of the bill cite State ex rel. Freeman v. Abstracters' Board of Examiners, which was decided by the Montana Supreme Court on May 9, 1935, a half century ago, as authority for the proposition that in the year 1985 and years following, there is an indisputable need for an "abstract" or "title plant" privately maintained by an agent issuring title insurance.

This proposition or contention cannot be supported in this day and age.

On May 9, 1935, the "Abstracters' Law" had barely been in existence 5 years. it is to be kept in mind that this law was proposed to the legislature by the same organization that is now proposing the adoption of House Bill 338.

At that time, due to relatively primitive methods of record keeping and reproduction, a privately maintained "abstract plant" was perhaps superior to some less sophisticated county courhouse systems.

With our present day methods of rapid reproduction of record documents and the extensive use of electronic devises in communications and record keeping, the antiquated need for "abstract" or "title plants" no longer exist.

This fact was recognized by the Supreme Court of the State of Montana in its holding in the 1975 case of Montana Land Title Association v. First American Title and Escrow of Billings, where it held unconstitutional the law that prevented the issuance of a policy of title insurance on the basis of an opinion of title by a licensed Montana attorney after the review of the pertinent title records, public or private, without the maintenance of an abstracting plant as required by the "Abstracters' Law."

This fact was further recognized by the Legislature of the State of Montana, when, on July 1, 1979, it wisely abolished the "Board of Abstracters" and on May 1, 1981, it wisely repealed the entire "Abstracters' Law" including the law requiring the maintenance of an abstracting plant.

It has not been demonstrated or proven by the proponents of House Bill 338 that such actions by the Montana Supreme Court and the Montana Legislature were detrimental to the public health, safety or welfare or to the consumer in particular. Therefore, the present contention of the Montana Land Title Association is shown to be baseless.

We who oppose the adoption of House Bill 338 would further point out that to limit title agent licenses (by the economic barrier of the requirement of a "title plant" as a prerequisite to the licensing of a title insurance agent) to slightly more than 50 members of the Montana Land Title Association would be unconstitutionally discriminatory and subject to nullification by the Supreme Court of the State of Montana.

Furthermore, ponder the dilemma presented by the counties of Treasure and Garfield where we are informed that no title plants presently exist.

Lastly, we believe that the proponents have fostered the misconception that House Bill 338 affects only "abstracters" and "attorneys" as possible licensed title insurance agents.

Under the existing law in the State of Montana as the same relates to title insurance agents, any Montana citizen or business person, non-attorney as well as attorney, otherwise qualified as to financial ability, integrity, experience and knowledge, may be licensed as a Montana title insurance agent upon the application of that person after appointment by a qualified title insurance underwriter as its agent, and may thereafter issues policies of title insurance based on the opinion of title by a licensed Montana attorney after a review of pertinent title records, public or private.

Thus, the battle line is not drawn between the Montana Land Title Association members and the Montana attorneys, but is drawn between the citizens of the State of Montana as a whole and the relatively few members of the Montana Land Title Association.

If you should desire to direct any further questions to me relative to our opposition viewpoint, please dial me direct--collect at 0-446-2603.

Very truly yours,

A. L. Craddock
Attorney at Law

A. L. CRADDOCK
ATTORNEY AT LAW
Phone: (406) 446-2603
2 N. Broadway -- The Pollard
Red Lodge, Montana 59068
P. O. Drawer 10

January 14, 1985

House of Representatives
Business and Labor Committee
Hon. Bob Pavlovich, Chairman
State Capitol Building
Capitol Station
Helena, Montana 59620

Re: House Bill 338
Montana Title Insurance Act

Dear Chairman Pavlovich and Committee Members:

In a long distance telephone conversation with Rep. Bruce Simon on February 13, 1985, relative to House Bill 338, I was surprised and distressed to learn that one or more of the proponents of the bill had told this Committee that any person applying to the insurance commissioner for any type of insurance agent's license could also obtain a title insurance agent's license merely by checking a box on the application form.

That statement absolutely is not true, and as I related to Rep. Simon, anyone who told this Committee that was not only reckless with the truth but was simply lying to the Committee.

First, it is impossible for anyone in the State of Montana to obtain an insurance agent's license of any type without first having been appointed as a specific type of insurance agent by a specific "Insurer" licensed or authorized to transact a specific type of insurance business in the State of Montana.

Thus, an "Insurer" (insurance company or underwriter) who is licensed only to write disability insurance in the State of Montana can appoint only disability insurance agents who in turn will be issued only disability inusurance agents' licenses by the insurance commissioner.

The use of "boxes" on the "Appointment of Agent" forms and the "Insurance Agent's License" forms supplied by the insurance commissioner (copies of which are enclosed herewith) is to avoid the need for multiple forms and to allow the use of but one form for all types of insurance agents.

The office of the insurance commissioner would not, under any circumstances, issue a title insurance agent's license to an agent appointed by an insurer licensed in Montana to issue only insurance other than title insurance, no matter how many boxes were checked.

Therefore, it is readily seen that the appointment and licensing of title insurance agents in the State of Montana is under the strict surveillance, regulation and control of the title insurer and the insurance commissioner.

A title insurer who is to be strictly liable for the payment of possibly millions of dollars in claims is not apt to appoint an incompetent, unqualified or dishonest person as its agent.

If the title insurance agent improperly insures a title in the State of Montana, it is not the consumer who is injured or damaged, it is the title insurer who loses, as the title insurer is obligated by state law to honor the policies of title insurance written by its agent and to pay the claims made against such policy.

For the reasons stated, it is respectfully submitted that there is no need for the expense and inconvience of examinations as a prerequisite to the licensing of title insurance agents, as their appointment and licensing are adequately policed by the title insurers and the Montana Insurance Commissioner. This fact was realized by the framers of the present Montana Insurance Agency Licensing Law when they excluded title insurance agents from the examination requirement.

As related to Rep. Simon on February 13, 1985, we who are opposed to House Bill 338 believe that it is unconstitutional as written in that it would consititute and ex post facto application of regulatory law on those presently legally licensed as title insurance agents.

Therefore, in the event that some form of House Bill 338 is enacted into law, we respectfully and urgently suggest and request that a "grandfather clause" be included so as to avoid the ex post facto objection.

Such a clause is spelled out by me in the written "Statement In Opposition And Suggested Amendments" presented by us at the initial committee hearing on House Bill 338. See Paragraph "J" at Page 5 thereof.

Thank you for your further consideration.

Very truly yours,

A. L. Craddock
Attorney at Law

AC:rc

INS. 1007C (Rev. 81)

APPOINTMENT OF AGENT

TO THE INSURANCE COMMISSIONER OF THE STATE OF MONTANA,

Helena, Montana

(Both address blocks must be completed)

CARBON TITLE GUARANTY
(Agent/Agency name exactly as licensed)
2 N. Broadway, Drawer 10
(Address)
Red Lodge, Montana 59068
(City and State) (Zip Code)

(Complete this for return of Company Copy of this form)

TICOR TITLE INSURANCE COMPANY
(Name of Insurer)
Suite 15 - 600 Central Plaza
(Address)
Great Falls, Montana 59401
(City and State) (Zip Code)

AGENT'S LICENSE NO. 7626

The above named is hereby appointed as an agent of the undersigned Insurer for the following kinds of insurance which the Insurer is authorized to transact in the State of Montana.

(b) ☐ Disability (c) ☐ Property (d) ☐ Casualty (e) ☐ Vehicle (f) ☐ Surety (g) ☒ Title (j) ☐ Hail (m) ☐ Mechanical Breakdown

The appointment is subject to restrictions which may be placed upon the authority of the agent by the Insurer, and to the existence in the name of the appointee as licensee, of a valid agent's license issued by the Insurance Commissioner of the State of Montana.

COMMISSIONER OF INSURANCE
VALIDATED
AT HELENA
AUG 24 1984
STATE OF MONTANA

R. K. Craddock, Title Officer
A. L. Craddock, Attorney at Law, Chief Title Officer
C. R. Elton, Title Officer
(Names of persons authorized on license if firm or partnership)

Note:
Submit all 4 copies to the Ins. Dept.

TICOR TITLE INSURANCE COMPANY
(Insurer)
By J. L. Cady, Jr.
(Authorized Signature)
J. L. Cady, Jr., Assistant Secretary

FORM NO. 1037

OFFICE OF STATE AUDITOR
STATE OF MONTANA — INSURANCE DEPARTMENT

INSURANCE AGENT'S LICENSE

2

NOT TRANSFERABLE

THIS CERTIFIES THAT THE PERSON NAMED HEREON, SUBJECT TO THE PROVISIONS OF THE INSURANCE CODE, IS HEREBY LICENSED AS AN AGENT TO TRANSACT INSURANCE WITHIN THE STATE FOR SUCH INSURERS AS LAWFULLY APPOINT HIM AS AGENT, FOR THE KINDS OF INSURANCE AS INDICATED ON THIS LICENSE.

NO. 7026 AMENDED

DATE	RECEIPT NO.
AUG 24 84	219049

CARBON TITLE GUARANTY
2 N. BROADWAY
DRAWER 10
RED LODGE, MT. 59068

THIS LICENSE MUST BE ON DISPLAY IN LICENSEE'S PLACE OF BUSINESS, AND SHALL AT ALL TIMES BE THE PROPERTY OF THE STATE OF MONTANA, MUST BE RETURNED TO THE COMMISSIONER UPON ANY EXPIRATION, TERMINATION, SUSPENSION OR REVOCATION.

B - DISABILITY
C - PROPERTY
D - CASUALTY
E - VEHICLE
F - SURETY
G - TITLE X

OTHER AUTHORIZED PERSONS

R. K. CRADDOCK, TITLE OFFICER
A. L. CRADDOCK, CHIEF TITLE OFFICER
C. R. ELTON, TITLE OFFICER

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

E. V. Sonny

COMMISSIONER OF INSURANCE

FORM INS. 1012-82

STATE OF MONTANA

OFFICE OF

E. V. "SONNY" OMHOLT

STATE AUDITOR

COMMISSIONER OF INSURANCE
INVESTMENT COMMISSIONER
CENTRAL PAYROLL SYSTEM

HELENA, MONTANA 59601

TO: INSURANCE AGENCY ADDRESSED

RE: AMENDED LICENSE NO. 7026

Enclosed, please find your amended agency license showing that C. L. Stone

has been (added) (deleted).

Your insurer's are no longer required to file amended appointments with this office but it is your responsibility to notify them of this change.

Sincerely,

E. V. "SONNY" OMHOLT
State Auditor & Ex Officio
Commissioner of Insurance

Joyce A. Meagher

Joyce A. Meagher, AFE
Licensing Supervisor

JM/s
Encls.

February 3, 1985

House Business & Labor Committee
Main Capitol
Helena, MT 59620

RE: House Bill 338 - Teddy Annear personally appeared at committee hearing January 31, 1985 and this is the prepared statement requested.

I'm Teddy Annear from Bozeman, Montana. I own and operate my own escrow company and have just recently started a separate title company.

I have had experience working with and in title companies; courthouse as a deputy assessor; and in lending institutions. I believe I am in a unique position to give an opinion on this house bill 338, as for the past two years I have done real estate closings using various title companies, all of which have plants.

I have taken time away from my business today to appear before this committee to oppose "house bill 338".

In this time of deregulation, here is an industry requesting to be regulated! Please take time to ask yourself why! ! Read their bill carefully. Title insurance is an unusual and often times misunderstood profession.

Presently the substantial insurance companies apply to conduct business in Montana. Upon approval, it becomes their responsibility to choose agents and they bear the responsibility of the agents actions. As long as an agent is acting for an insurace company, the customer is protected and if an ex-agent falsely states he is acting for an insurance company, he faces civil action - - - which is what this bill proposes - - - but requests the commissioner to accept the burden.

Title Insurance is described as an examination of public records. This bill proposes all agents have a plant. I strongly oppose this for the following reasons:

1. Presently many errors are made due to agents relying too heavily on their plants; and in a rush do not show lien or mortgage releases, or worse yet not showing new liens and mortgages.

2. In various areas of the state, attorneys and other agents are quite adequate in examining from courthouse records.

Another portion of this bill indicates the commission will establish plant standards. How will the commission establish these standards? I for one intend to use new technology and see this as a drawback in serving the public quickly and accurately.

The bill also states that the commission will appoint representatives to examine such plants and the agent will pay for such an examination. I see this as an unneeded expense to

the agent, because it is virtually impossible for someone to find errors in title plants. Also, since this is proposed, people will be hired to set standards, etc., and I believe tax payers will pay the unnecessary burdens.

Briefly opposing other portions of the bill: Upon careful review, you'll note:

A. Very few can qualify to own a plant because they are limited not only by their occupation, but also that of their mother, brother, child or any other associate.

B. Section six reads "financial interest" means a legal or beneficial interest that entitles the holder directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held. In a small business, such as my own, that would include all employees.

My last, but certainly not final objection to this bill is "objection to an interest bearing trust account". As a sole propriator, I was advised by my banker to have such an account. I pay tax on such interest earned as it's considered income. None other than a sole propriator can have such an account, and as a sole propriator, you are less likely to do anything wrong as their are no corporate laws to hide behind. Not only is a sole propriators business in jeopardy, in case of error, but also everything he owns, home, family, etc. Therefore, I am very careful to handle my business properly. Upon closing a transaction, to allow enough time for proper handling of recording, etc., all disbursements are handled within 24 hours, generally less. Therefore, you can see that interest earned does not belong to buyer, since he received property on payment, nor seller, since he receives funds immediately on transfer of property. The interest I earn, is on the time it takes the check to clear the banks. Without this interest bearing account I would be unable to compete today, as title companies keep the closing fee low to keep out competition, though they obviously can't handle all of the business to the customers satisfaction. They are able to charge such low fees because they are compensated by the title insurance fees.

I have a growing business because customers are pleased with the unusual quick handling of their transaction. A buyer is able to get in a home more quickly and a seller pays less interest on loan pay-offs.

I object to other portions of this bill also, which will be voiced, if the bill continues further.

I hope after your careful review, you will see thru the voiced intent of this bill and recognize the true intention.

Sincerely,

Teddy Annear

TA/bgm

Theodora Annear

We the undersigned petition the House Business and Labor Committee to table house bill #338 for the following reasons:

1 - There are already laws that can handle disbutes in the title industry or any other industry.

2 - The commissioner is unfamiliar with such handlings, therefore hurting the citizens as follows:

a - Costing the taxpayer money for office education, monitoring and enforcement and/or

b - Disregarding the rights of the citizens to fair competion by allowing someone from the title industry to review and approve confidential contract and operating proposals.

Attempting to monitor ethics is ideal but impossible. This can cost the taxpayer a fortune with no results.

Dated this 6th day of February, 1985.

Brenda Manry

Debra Manry

HB 33

We the undersigned petition the House Business and Labor Committee to table house bill #338 for the following reasons:

1.- There are already laws that can handle disbutes in the title industry or any other industry.

2 - The commissioner is unfamiliar with such handlings, therefore hurting the citizens as follows:

a - Costing the taxpayer money for office education, monitoring and enforcement and/or

b - Disregarding the rights of the citizens to fair competion by allowing someone from the title industry to review and approve confidential contract and operating proposals.

Attempting to monitor ethics is ideal but impossible. This can cost the taxpayer a fortune with no results.

Dated this 6th day of February, 1985.

Dan R. Litt

Harley Hardiman

Darby Swingle

Pat Hawkins

Connie Wallace

Jamie Rankin

Kathy Evans

VISITORS' REGISTER

HOUSE BUSINESS AND LABOR COMMITTEE

BILL House Bill 338 Date January 31, 1985

SPONSOR Representative Addy

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
AL Craddock	Redlodge	Carbon Title Guaranty		X
GENE PHILLIPS	KALISPEL	MONTANA LAND TITLE ASSOC.	X	
WM. F. GOWEN	HELENA	HELENA ABSTRACT & TITLE CO. MONTANA LAND TITLE ASSN	X	
LOREN SCHIERER	KALISPELL	County Guaranty Title Co.	X	
JOHN C SMITH	DENVER	STEWART TITLE GUARANTY	X	
Robert Noe	Columbus	Stillwater Abstract Co.	X	
Robert Noe	Columbus	Carbon County Abst. & Title Co.	X	
BRAD STRATTON	Bozeman	American Land Title Co.	X	
Steve Strekall	Billings	American Title & Escrow		X
Mike Reese	Stevensville	1st American Title	X	
Shelley A. Curtis	Hamilton	First Montana Title	X	
Arlene Scott	Hamilton	First Montana Title	X	
Jack Johns	Great Falls	Mountain Title	X	
Robert Mitchell	Boise, Idaho	SAFECO Title Insurance	X	
Terry Carmody	Helena	MT. Assn. of REALTOR	X	
DICK BACH	HELENA	MT. DEPT. OF REVS	X	
Norm Eimbinder	Minneapolis Minn	Minnesota Title	X	
G.J. Gordon	FORT BENTON	Chouteau Co Abst Co.	X	
Ron Grandlund	Minneapolis Minn.	Title Ins. Co. of Minn	X	
Harry Anker	Bozeman, MT,	Guardian title		X
Title American	Bozeman, MT.	Title Abstract		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 1, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on February 1, 1985 at 8:00 a.m. in Room 312-1 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL 321: Hearing commenced on House Bill 321. Representative Ray Peck, District #15, was the sponsor of the bill, by request of the Department of Commerce. This bill amends the banking law to change the definition of a demand deposit as one payable within fourteen days rather than thirty days and time deposits on all savings accounts and certificates of deposits subject to notice of not less than 14 days, rather than not less than 30 days, before payment. Representative Peck distributed to committee members Exhibit 1 which is attached hereto.

Proponent Fred Napier, Commissioner of Financial Institutions, Department of Commerce, stated that the provision called for in House Bill 321 will conform to the federal statute and that a more realistic definition of time deposit will exist.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 321 was closed.

HOUSE BILL 492: Hearing commenced on House Bill 492. Representative Mary Lou Peterson, District #1, sponsor of the bill, explained that this bill would change the notification duties of automobile dealers upon sale of a new vehicle, In addition to affixing a sticker to the rear window of the vehicle, within four days instead of ten days as in present law, after delivery of a new vehicle the dealer must forward to the treasurer of the purchaser's home county a copy of the sticker and a completed application for certificate of title, and other necessary documents.

Proponent Larry Majerus, Administrator, Motor Vehicle Division, proposed amendments as shown on the Standing Committee Report attached. Mr. Majerus stated that House Bill 492 will simplify the documents that must be filed to place a lien on a motor vehicle, the documents a dealer must send to the county treasurer upon a sale of a new vehicle and provide statutory guidance to auto dealers.

ACTION ON HOUSE BILL 466: Representative Brown motioned that House Bill 466 DO PASS. Second was received, and a unanimous vote was received.

ACTION ON HOUSE BILL 321: Representative Brandewie made a motion that House Bill 321 DO PASS and moved the amendments to House Bill 321. Second was received and a unanimous vote in favor of House Bill 321 DO PASS AS AMENDED was received.

ACTION ON HOUSE BILL 492: Representative Simon moved that House Bill 492 DO PASS. Representative Simon then moved the amendments, and both received a unanimous vote. House Bill 492 PASSED AS AMENDED.

ACTION ON HOUSE BILL 309: Representative Jones made a motion that House Bill 309 DO NOT PASS. Representative Jones commented that the Highway Patrol can do the job with less people. A fiscal note will be obtained before further consideration from the committee. Representative Jones withdrew his motion.

ACTION ON HOUSE BILL 334: Representative Driscoll moved that House Bill 334 DO PASS. Representative Driscoll moved the Statement of Intent. Representative Kadas moved the proposed amendments by the Department of Revenue. The amendments PASSED with all but Representatives Brandewie, Glaser, and Pavlovich voting yes. House Bill 334 PASSED AS AMENDED WITH STATEMENT OF INTENT, with all voting yes with the exception of Representative Pavlovich.

ACTION ON HOUSE BILL 338: Representative Simon made a motion that House Bill 338 BE TABLED. Representative Thomas stated that the bill has good content and these should be identified and adopted. Representative Brandewie added that this problem has to be addressed, there are incompetent people preparing title reports. Question being called for, a unanimous vote was received in favor of TABLING House Bill 338.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 11:00 a.m.

Rep. Bob Pavlovich

Representative Bob Pavlovich
Chairman

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date _____

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

register and license crematoriums separately from morticians.

Proponent Roland D. Pratt, Executive Director, Montana Funeral Directors' Association, explained that we should learn from our neighboring states and take preventitive measures now.

Opponent Barry Hjort, presenting Hillcrest Lawn Mosoleum, explained that there are 6 crematoriums in Montana, two of which are free standing. Mr. Hjort does not see the need for this legislation.

Representative Schultz asked Mr. Dolan how many times the examination can be taken. Mr. Dolan explained that it can be taken as many times as an individual wishes.

Representative Ellerd asked Mr. Dolan if a body can be buried and/or cremated without being embalmed. Mr. Dolan explained that if a body is buried within 48 hours there is no need for embalming and a body can be cremated without embalming.

Representative Hart asked Mr. Dolan if the bill was drawn without the crematoriums being notified or included. Mr. Dolan explained that it had, due to lack of communication and that they have nothing against crematoriums, but are trying to group all together.

Representative Simon asked Mr. Dolan what the current law is on a dead body. Mr. Dolan stated that it is entirely up to the next of kin who have 48 hours to decide. After 48 hours, a body must be embalmed.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 477 was closed.

ACTION ON HOUSE BILL 338: Representative Jones moved that the committee reconsider their action of House Bill 338. Representative Jones explained the proposed amendments that would strike the title plant requirement from the bill. Representative Ellerd asked if these amendments, satisfy all the concerned parties, to which the answer was yes. Representative Brandewie stated that something must be done to see that competent individuals are searching title. Question being called, a roll call vote resulted in 8 members voting yes and 11 members voting no to Representative Jones' motion to reconsider.

Representative Bachini explained to the committee that he had constituents concerned with the funding of Amtrak who wish the funding to continue as it presently exists. Due to the deadline with the introduction of bills, Representative Bachini was requesting the committee to draft a resolution. All agreed with the exception of Representative Ellerd.

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date Feb. 12, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE 2-12-85 BILL NO. 338 TIME

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitselman	✓	
Bob Bachini	✓	
Ray Brandewie	✓	
Jan Brown	✓	
Jerry Driscoll		✓
Robert Ellerd		✓
William Glaser	✓	
Stella Jean Hansen		✓
Marjorie Hart		✓
Ramona Howe		✓
Tom Jones	✓	
Mike Kadas		✓
Vernon Keller	✓	
Lloyd McCormick		✓
Jerry Nisbet		✓
James Schultz		✓
Bruce Simon		✓
Fred Thomas		
Norm Wallin		✓

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: 8-11 Re-consider

CS-31

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 18, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich, on February 18, 1985 at 7:30 a.m., in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

ACTION ON HOUSE BILL 354: Rep. Brandewie moved that House Bill 354 DO PASS. Rep. Glaser explained that more is at stake than seaplanes, smaller airports could be forced out of business if fees are to be charged. A roll call vote resulted in 11 members voting yes and 8 members voted no. House Bill 354 DO PASS.

ACTION ON HOUSE BILL 668: Rep. Kitselman told the committee that this bill will effect 1/10 of 1% of the premium market. Rep. Glaser suggested that the committee defer action until Rep. Kitselman's House Bill 817 is heard. Rep. Thomas added that this bill is not able to work financially. House Bill 668 will be held until House Bill 817 is heard.

ACTION ON HOUSE BILL 691: Rep. Kitselman made a motion that House Bill 691 be TABLED. Rep. Ellerd made a substitute motion that House Bill 691 DO NOT PASS. A roll call vote resulted in 12 members voting yes and 8 members voting no. House Bill 691 DO NOT PASS.

ACTION ON HOUSE BILL 568: Chairman Pavlovich explained to the committee that the sponsor of the bill requested the committee reconsider their action. Rep. Driscoll moved that the committee reconsider. The motion did fail, House Bill 568 will not be reconsidered.

ACTION ON HOUSE BILL 338: Rep. Brandewie moved that House Bill 338 be taken from the TABLE. Rep: Hansen offered a substitute motion that House Bill 338 remain TABLED. The motion did fail, with 9 members voting yes and 11 members voting no. Rep. Thomas moved that House Bill 338 DO PASS. Rep. Jones moved the amendments which are attached hereto as Exhibit 1. The amendments DO PASS unanimously. Rep. Kadas added that House Bill 338 as amended will answer the big problems in the industry, but not the little problems. A roll call vote found 13 members voting yes and 7 members voting no. House Bill 338 DO PASS AS AMENDED.

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 18, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STANDING COMMITTEE REPORT

February 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 338

FIRST reading copy (WHITE color)

GENERALLY REVISE TITLE INSURANCE LAWS

Respectfully report as follows: That HOUSE Bill No. 338

BE AMENDED AS FOLLOWS:

1) Title, line 6
Following: "AGENTS,"
Strike: the remainder of line 6, line 7 in its entirety and line 8 through "THEREFOR,"

2) Page 17, line 4, through page 20, line 8
Strike: Sections 16, 17, 18 and 19 in their entirety
Renumber: subsequent sections

3) Page 26, line 15
Following: "through"
Strike: "19"
Insert: "15"

DO PASS

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

4) Page 26, line 17
Following: "through"
Strike: "19"
Insert: "15"

5) Renumber internal references as follows:
Strike: "19"
Insert: "15"
On: page 1, line 15
page 1, line 18
page 7, line 3
page 7, line 9
page 7, line 11

AND AS AMENDED,
DO PASS

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE Feb. 18th BILL NO. 338 TIME

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitselman	✓	
Bob Bachini	✓	
Ray Brandewie	✓	
Jan Brown	✓	
Jerry Driscoll	✓	
Robert Ellerd	✓	
William Glaser	✓	
Stella Jean Hansen		✓
Marjorie Hart		✓
Ramona Howe		✓
Tom Jones	✓	
Mike Kadas		✓
Vernon Keller	✓	
Lloyd McCormick		✓
Jerry Nisbet		✓
James Schultz	✓	
Bruce Simon	✓	
Fred Thomas		✓
Norm Wallin	✓	

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: 13-7 Do Pass As Amended

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE Feb. 18, 1985 BILL NO. 338 TIME

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitselman		✓
Bob Bachini	✓	✓
Ray Brandewie		✓
Jan Brown		✓
Jerry Driscoll		✓
Robert Ellerd	✓	
William Glaser		✓
Stella Jean Hansen	✓	
Marjorie Hart	✓	
Ramona Howe	✓	
Tom Jones		✓
Mike Kadas	✓	
Vernon Keller		✓
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz		✓
Bruce Simon		✓
Fred Thomas		✓
Norm Wallin		✓

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: 9-11 Leave TABLED

Exhibit 1
2/18/85
House Bill 338

Amendment to House Bill 338, Introduced Bill

1. Title, line 6.
Following: "AGENTS,"
Strike: the remainder of line 6, line 7 in its entirety, and line 8 through "THEREFOR,"

2. Page 17, line 4, through page 20, line 8.
Strike: Sections 16, 17, 18, and 19 in their entirety
Renumber: subsequent sections

3. Page 26, line 15.
Following: "through"
Strike: "19"
Insert: "15"

4. Page 26, line ~~18~~ 17.
Following: "through"
Strike: "19"
Insert: "15"

CHAIRMAN--HALLIGAN, MIKE
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M-TU-W-TH-F TIME: 10:00 A.M.-12 NOON
SECRETARY-DUVAL, CAROL

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0221	2/07	3/06	3/6	ADVERSE REPORT		3/6
GARCIA, RODNEY L.			MAKE LAW ON RESIDENTIAL TENANTS' SECURITY DEPOSITS APPLY TO COMMERCIAL			
HB0223	2/04	3/06	3/07	TABLED		3/7
RAMIREZ, JACK			REMEDY FOR LANDLORD IF TENANT VACATES WITHOUT GIVING PROPER NOTICE			
HB0236	2/15	3/12	3/28	CONCUR AS AMENDED	BUSINESS & LABOR	3/28
PAVLOVICH, ROBERT J. (BOB)			REDEFINE "CARD GAMES" TO INCLUDE VIDEO GAME MACHINES			
HB0236	3/28		4/04 4/3	CONCUR AS AMENDED		4/4
PAVLOVICH, ROBERT J. (BOB)			REDEFINE "CARD GAMES" TO INCLUDE VIDEO GAME MACHINES			
HB0264	1/30				JUDICIARY	
PISTORIA, PAUL G.			REQUIRING BUILDING CONTRACTORS TO PROMPTLY PAY SUBCONTRACTORS, SUPPLIERS			
HB0266	2/07	3/07	3/7	CONCUR		3/7
HARBIN, RAYMOND K.			REQUIRE TAX PAYMENTS OVER $500,000 TO BE MADE BY ELECTRONIC FUNDS TRANSFER			
HB0268	2/07	3/08	3/8	CONCUR		3/8
HARBIN, RAYMOND K.			AGENCY LETTING CONTRACT TO HOLD SECURITY IN LIEU OF RETAINED PAYMENTS			
HB0321	2/07	3/05	3/5	CONCUR		3/5
PECK, RAY			REVISE DEFINITION OF DEMAND AND TIME DEPOSITS			
HB0334	2/07	3/08	3/13	CONCUR		3/13
GOULD, R. BUDD			RENTAL OF PORTABLE BEER DISPENSERS BY BEER WHOLESALERS TO RETAILERS			
HB0338	2/22	3/13	3/26 3/27	CONCUR AS AMENDED		3/27
ADDY, KELLY			GENERALLY REVISE TITLE INSURANCE LAWS			
HB0359	2/12	3/12	3/13	CONCUR		3/13
NISBET, GERALD D. (JERRY)			LOANS GUARANTEED BY STATE AGENCY EXEMPT FROM BANK LOAN LIMIT			

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 13, 1985

The thirty-seventh meeting of the Business & Industry Committee met on Wednesday, March 13 in Room 410 of the Capitol Building. Chairman Mike Halligan called the meeting to order at 10 a.m.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 602: Representative Harry Fritz, House District #56, Missoula, is the chief sponsor of this bill which defines the relationship between an artist and an art dealer, provides that a consignment relationship be created and provides that the dealer is a trustee and holds the artist's works and funds in trust. It also provides for notice of sales made to the artist. He explained it sets forth the terms of consignment and defines the artist and dealer business arrangements. It would define that a work of fine art is property held in trust by the consignee for the benefit of the consignor. The consignee is merely the holder of the art and not the owner of the work of art.

PROPONENTS: Janalyn Edmonson, a Missoula Attorney representing several artists there, submitted letters by Joan Jonkel, Barbara Hand, John Badgley and Mary Cummings in support of House Bill 602. (EXHIBIT 1) She stated the arts task force recommends that legislation be enacted regarding artist-art dealer relationships to ensure protection for the artist who consigns works of art. She feels this type of legislation would benefit those who consider art an essential element to the quality of life.

OPPONENTS: There were none.

Questions were then called for from the committee members. Senator Thayer wondered if we have any laws dealing with consignments now. He was told there is only what the uniform commercial code contains. Senator Halligan wanted clarification of whether an art dealer is one who is regularly engaged in selling artworks or just anyone who sells art. Janalyn Edmonson felt it was intended for those who make a business of selling art. Dave Nelson, Executive Director of the Montana Arts Council, explained they have a small problem with those who are just exhibiting art on a temporary basis and he felt a better definition should be addressed.

Senator Halligan wondered if it had been contemplated this would only protect the artist and Janalyn Edmonson explained this is just dealing with the original transaction. Senator Halligan thought this should perhaps be clarified.

Senator Gage wondered just what the purpose of the bill would be and Janalyn Edmonson explained it would help protect the artist's works from being attached should a gallery have financial difficulties so they would have some recourse. Senator Weeding wondered if this act would include works given for permanent display such as a museum. Janalyn Edmonson stated it should be clarified when art is just on exhibit and not for sale.

OPPONENTS: There were none.

Questions were then called for. Senator Goodover wondered if any losses have occurred through these type of transfers and John Scully explained with the security measures they have adopted he feels the losses would be minimal. Senator Weeding wondered if you could use the card for more than one account and was told that three accounts was the limit.

DISPOSITION OF HOUSE BILL 468: Senator Christiaens then MOVED HOUSE BILL 468 BE CONCURRED IN. The motion carried. Senator Thayer will carry the bill on the Senate floor.

CONSIDERATION OF HOUSE BILL 338: Representative Kelly Addy, House District 94, Billings, is the sponsor of the bill which would generally revise the laws relating to title insurance and provide for the licensing and regulation of title insurance agents and for the regulation of controlled business in the title insurance industry. He further explained it deals with the licensing of title insurance agents. In the original draft they were going to require that title plants be certified but this was amended out. He noted the fiscal note prepared took into consideration the cost of maintaining title plants and since this had been removed the fiscal note was outdated. It would just assure that the agent was licensed and knowledgable when working with titles.

PROPONENTS: Gene Phillips, representing the Montana Land Title Association from Kalispell, explained this bill was drafted by their legislative committee and modeled after a uniform bill which has been adopted in other states. There have been some abuses in the past and this would allow the state auditor to license these agents and have some regulation over abuses. There were some amendments that had been proposed by the auditor's office and these had been overlooked and he stated these should be examined also.

Bill Gowan, President of the Montana Land Title Association, feels that title agents should be tested to see if they are really qualified He submitted a letter from First American Title Insurance Company urging passage of this legislation. (EXHIBIT 11)

Warren Solberg, Kalispell, Chairman of the legislative committee for the Montana Land Title Association, feels that title insurance is very often misunderstood. The purchaser relies on the local agent to be knowledgable so therefore it is very important that this person be reliable. Currently there is no requirement that you have to have a license. There are 705 agents in the state and of these only about 100 are active. They would like everyone to take the test to see if they are indeed qualified. He noted there were amendments proposed by the insurance department and the land title association. (EXHIBIT 12 & 13)

Tanya Ask of the Montana Insurance Department of the State Auditor's Office, explained they support the amendments being proposed and would also like to delete the requirement that they assess a fee. She stated they already have the authority to charge $10 for an examination and this is sufficient.

Brad Stratton, from the American Title Association of Bozeman, felt the underwriters who write for the insurance companies should also be knowledgable and competent.

Testimony was also submitted by Robert Johnson in support. (EXHIBIT 1

OPPONENTS: Teddi Annear, owner of a title insurance business in Bozeman appeared in opposition of the bill. She feels there is no need for this legislation because it would eliminate competition and interfere with free enterprise. She wondered if the examiners would be tested as well as the agents who would be preparing the test. She feels that the agents are pretty thoroughly checked currently before they are able to sell insurance. (EXHIBIT 15) She noted that with the amendments being proposed it would alter her position somewhat if they were to be adopted.

Questions were then called for. Senator Williams asked Representative Addy to respond to Ms. Annear's statements. He noted that the definition of title agents does not include examiners who act under the agent. He felt that if the title agent cannot get a license that those under him would not be able to be licensed either. The insurance commissioner would prepare the test which would just be a basic knowledge of insurance to insure some standards for the industry.

Senator Christiaens asked Tanya Ask what requirements they ask for now of title agents. She explained they have to have a certification from the underwriting company and also be tested for general insurance knowledge. The examination for title agents would be along this same line. She noted they had received complaints from consumers concerning title agents.

Senator Halligan wondered if the fiscal note was current with the amendments proposed and Dick Gilbert, from the auditor's office, suggested a revised fiscal note should be requested.

Senator Fuller asked if it should be "agency" rather than "agent" in the bill. He also asked Bill Gowan if there would be a grandfather clause and was told no. Senator Goodover asked how long it took to become qualified as an agent and Bill Gowan felt it took 5 to 6 years of on the job training.

Senator Christiaens asked about title plants and how many had these. Bill Gowan explained that some title plants are much more up to date than courthouse records. Representative Addy responded this was the reason they had title plants originally in the bill but it was felt by doing this it would create a monopoly for those owning title plants.

Senator Thayer asked Ms. Annear what her chief concern was about

the legislation being proposed and she stated she felt this bill would not do anything for the people.

Senator Weeding asked how often the license is good for when you can sell title insurance and was told the license is perpetual and is renewed annually.

Senator Goodover wondered how you keep a title plant current and was told most do a daily check with courthouse records in order to keep their records up to date. Bill Gowan stated oil companies utilize local title plants when doing title searches extensively. Teddi Annear noted that mistakes can be made even in a good title plant if a person does things hurriedly.

Representative Addy stated in closing that complaints usually end up in the insurance office only as a last resort effort. He feels that defects in investments are time bombs and the property owner stands to lose the most if a mistake is made. He felt the examination would eliminate those who were not qualified to sell. Hearing was closed on House Bill 338.

DISPOSITION OF HOUSE BILL 334: Mary McCue, Legislative Staff Attorney, explained in her research that the Department of Revenue could foresee problems in regulating rentals because of the variety of equipment available and they did not want to be involved policing this.

Senator Goodover then MOVED THAT HOUSE BILL BE CONCURRED IN. The motion carried. Senator Gage will carry the bill on the Senate floor.

DISPOSITION OF HOUSE BILL 360: Senator Halligan noted some of the problems involved for renters when they are evicted and the process that is involved in going to court. Senator Thayer felt there was some way to get compensation back to the trailer park owner for overdue rent. Senator Gage felt this bill just deals with giving the person another 12 days to come up with the funds necessary for moving the mobile home.

Senator Fuller then MOVED HOUSE BILL 360 BE CONCURRED IN. Senator Goodover felt that by the time a three day notice is given there have been problems over the weeks. On a roll call vote, the motion passed 7 to 2. Senator Thayer and Senator Goodover voted no.

The meeting was adjourned at 12 noon.

MIKE HALLIGAN, Chairman

cd

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 3-13-85

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

DATE March 13, 1985

COMMITTEE ON BUSINESS & INDUSTRY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
uis=/4 UN2	MT Low Income Coal.	HB360	1	
O Harris Peterson	BOZ. Housing	360	X	
RAD STRATTON	American Land Title Co	HB 335	X	
EL RODRIGUES	MPA	360	X	
ais McDonald	B.C.U. 2113 Fed.	360	X	
eve Browning	First Bank System Helena	371		X
el Stearns	Norwest Bank Helena	371		X
AUF, MARIN	Light. INC MSLA	360	X	
n England	Mont PIRG	360	X	
ob Sull	MTA	464	1	

DATE

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
[illegible]	[illegible] Land Title	338		X
E PHILLIPS	MONT LAND TITLE ASSOC	HB 338	X	
[illegible]	MONTANA LAND TITLE ASSN County Guaranty Title	HB 338	X	
IAM F. GOWEN	MONTANA LAND TITLE ASSN & HELENA ABSTRACT & TITLE CO.	HB 338	X	
K H. JOHNS	MONTANA LAND TITLE ASSOC. MOUNTAIN TITLE	338	X	
[illegible] KENNEDY	MT ASSOC OF LANDLORDS	HB 360	X	X
alyn Edmondson	various Missoula artists	HB602	X	
HN T. Betts	First Montana Title Co.	HB 338	X	
[illegible]	First Montana Title Co.	HB 338	X	
[illegible]	[illegible]	[illegible]	[illegible]	
[illegible] Scott	First American Title	HB338	X	
[illegible] Cook	Montana Arts Council	HB602		
[illegible] L. Johnson	Mountain Land Title Assn Mountain Title	HB338	X	

(Please leave prepared statement with Secretary)

EXHIBIT 11
BUSINESS & INDUSTRY
March 13, 1985

First American Title Insurance Company

P.O. BOX 580, 156 WEST JUDICIAL STREET, BLACKFOOT, IDAHO 83221
TELEPHONE (208) 785-5511

D. H. Stufflebeam
REGIONAL VICE PRESIDENT
LEGAL COUNSEL

Michael K. Ferrin
ASSISTANT REGIONAL COUNSEL

March 11, 1985

Senator Mike Halligan
Chairman
Business and Industry Committee
State Senate
Capital Station
Helena, MT 59620

Re: House Bill 338

Dear Senator Halligan:

I understand that your committee is considering the passage of House Bill 338 which is designed to govern the title insurance industry in the State of Montana.

First American Title Insurance Company underwrites title insurance in the State of Montana and does so throughout the United States. Our company is the third largest title insurer in the United States.

I am writing you to let you know that First American believes that this legislation would be of benefit to the real estate purchaser as well as the title insurer. It gives both of us some guidelines as to definitions of the product, equitable licensing procedures and generally the matter of conducting the business of title insurance in the State of Montana. This is part of the uniform law that has been adopted or is being considered in other states. This would be most helpful to the industry to have uniformity in our procedures and regulations.

I hope that you will favorably consider this legislation.

Thank you.

Very truly yours,

Dwain H. Stufflebeam
Regional Vice President
Legal Counsel

DHS/lmw

EXHIBIT 11
March 13, 1985
BUSINESS & INDUSTRY

NAME: WILLIAM F. GOWEN DATE: 13 MARCH 1985

ADDRESS: 101 NORTH LAST CHANCE GULCH, HELENA MT 59601

PHONE: 442-5080

REPRESENTING WHOM? MONTANA LAND TITLE ASSOC. & HELENA ABSTRACT & TITLE CO.

APPEARING ON WHICH PROPOSAL: HB 338

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: The bill requires testing for licensees which will provide a criteria to determine the qualifications of persons applying for agents licenses. I have been in the Title Insurance business for 27 years, 19 years in Montana. I feel I am qualified, but I also feel that taking a test will not prove adverse to my profession. The bill also provide safeguards to the public for title agents that provide settlement services, such as maintaining separate trust accounts and records.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 12
BUSINESS & INDUSTRY
March 13, 1985

AMENDMENTS TO HOUSE BILL NO. 338
REQUESTED BY THE MONTANA LAND TITLE ASSOCIATION

NEW SECTION. Section 6. Underwriting standards -- record retention. (1) A title insurer may not issue a title insurance policy unless it, its agent, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent may keep original evidence or may establish in the regular course of business a system of recording, copying or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, no title insurer or title agent may knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured ~~or assigns~~ arising thereunder.

NEW SECTION. Section 7. Escrow, closing, or settlement services — title indemnification -- maintenance of accounts — rules. (1) A title insurer or title agent may provide escrow, settlement, or closing services, or any combination thereof, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3).

(2) A title insurer or title agent shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title agent. A title insurer or agent may use such funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) pay any interest received on funds deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) A title agent must keep books of account, records and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner that the commissioner or his authorized representative may readily ascertain, under the authority of 33-1-402, whether the title agent has complied with all applicable provisions of this title.

NEW SECTION. Section 12. Prohibited practices -- referrals -- splitting charges -- exemptions. (1) Except as provided in subsection (2), no person may:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title agent; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agent ~~or franchise relationship~~ if:

(i) at or prior to the time of a referral a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range

of charges generally made by the title agent to which the person is referred; and

(ii) the person is not required to use a particular agent.

(b) The following arrangements are not a violation of subsection (2) (a) (ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chose by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2) (a) (i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title agent for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

EXHIBIT 13
BUSINESS & INDUSTRY
March 13, 1985

House Bill 338

Amendments Proposed by the Montana Insurance Department

1. Amend Section 2 Subsection (8) as follows:

(8)(a) "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

(i) buying or selling interests in real property;

(ii) making loans secured by interests in real property; or

(iii) acting as broker, agent, ~~or~~ representative or attorney of a person described in subsection (8)(a)(i) or (8)(a)(ii).

~~(b) "Producer of title business" does not include an attorney licensed to practice law in this state.~~

2. Amend Section 5 Subsection (1) as follows:

NEW SECTION. Section 5. Limitations on authority. (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. Any insurer authorized to transact any combination of kinds of insurance including title business under an existing certificate of authority may continue to do so until that certificate of authority is renewed effective June 1, 1986.

3. Add New Section between Section 24 and 25, renumbering Sections 25 through 28

Section 25. Section 33-17-1102, MCA, is amended to read:

33-17-1102. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. Except for title agents as defined in [Section 2], ~~If~~ if the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Title agents, as defined in [Section 2], shall comply with [Section 7].

~~(2)~~(3) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is, upon conviction, guilty of theft and shall be punished by law.

EXHIBIT 14
BUSINESS & INDUSTRY
March 13, 1985

NAME: ROBERT L. JOHNSON DATE: 3/13/85

ADDRESS: 507 MT. BLDG., LEWISTOWN, MT 59457

PHONE: 406-538-3446

REPRESENTING WHOM? SELF - ATTORNEY AT LAW - AND - REALTY TITLE CO., LEWISTOWN (CO-OWNER)

APPEARING ON WHICH PROPOSAL: H.B. 338

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: FAVOR LEGISLATION WITH PROPOSED AMENDMENTS. AS ATTORNEY CAN LIVE EASILY WITH "CONTROLLED BUSINESS" RESTRICTIONS.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 15
BUSINESS & INDUSTRY
March 13, 1985

HOUSE BILL 338

WHAT IS IT'S PURPOSE

1 - Proponent -Licensing and regulating title agents.

1 - Opponent -Presently the substantial insurance companies apply to conduct business in Montana. Upon approval, it becomes their responsibility to choose agents and they bear the responsibility of agents actions. As long as an agent is acting for an insurance company, the customer is protected and if an ex-agent falsely states he is acting for an insurance company, he faces civil action --- which is what this bill proposes --- but, requests the commissioner to accept the burden. Such regulation will have an impact on the general fund, since someone must be hired and trained to handle this position.

2 - Proponent -The examination of title insurance plants.

2 - Opponent -This has been stricken from the bill as it was proven to be virtually impossible to discover errors in title plants.

3 - Proponent -Issuance of certificates of authority.

3 - Opponent -Presently when a title company chooses an agent (after a careful investigation of such agent) application is made to the State, and upon approval (the insurance commission can, at this time, refuse a license) a license is issued to an agent for display in the plance of business.

ASSUMPTIONS

1 - Proponent -This bill will reduce the number of agents that are licensed for title insurance

1 - Opponent - Part of this is due to limitation of an agent operating associated businesses. ~~and limitations imposed on the occupation of an agents relatives~~. I believe this interferes with fair trade practices.

2 - Proponent - Additional revenue raised from title plant inspections.

2 - Opponent - This no longer applies since it has been stricken from the bill.

3 - Proponent -Requirements of the bill for inspections of title plants, examinations for licensing of title insurance agents, issuance of certificates and regulation of title insurance will require additional expenditures.

3 - Opponent-Under the present system title insurance is controlled and no additional expenditures are required

OPPONENT'S STATEMENT

I oppose this bill #338 on title insurance for the following reasons:

1 - I see that it serves no true purpose but to eliminate competition and feel this interferes with free enterprise.

2 - Matters addressed are already covered under present regulations.

3 - In speaking with representatives and citizens of Bozeman, their support of this bill was solicited on the belief that this bill would eliminate certain escrow problems. However, after review of such bill, they discovered it did not. By running this bill through as a "TITLE BILL" it can not cover all escrow associates and procedures. Had it been introduces as an "ESCROW BILL" it could have eliminated the true problem and helped all professionals associated with escrow and the citizens.

Since the legislation is in session to solve PROBLEMS and it should be clear that this bill does not meet a problem solving requirement, I request that this bill die here in committee and stop costing the taxpayer any more monies.

I feel the citizens of Montana will need to hear a stronger argument as to why their taxes are supporting this bill 338.

Respectfully submitted,

Theodora (Teddy) Annear
P.O. Box 394
Bozeman, Montana 59715

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 26, 1985

The forty-sixth meeting of the Business & Industry Committee met on Tuesday, March 26th at 10 a.m. in Room 410 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 420: Representative Ted Schye, House District #18, Glasgow, is the chief sponsor of this bill which increases allowable license fees of aircraft, airmen and instructors, clarifies the airport license fee provision and provides for an effective date. He noted this bill had been requested by the Department of Commerce, division of aeronautics. It would change the fee from $1 to $10 for registration of each certificate or permit. It would also allow the mechanism for charging for the licensure of airports.

PROPONENTS: Mike Ferguson, with the aeronautics division explained this would just make consistent the act that already authorizes the charge of $10 for part of the aircraft registration. He noted they have been ordered by district court to license airports and they would like to change the 1945 law to clarify that the amount charged is the actual cost incurred to do the licensing. There would be a cap of $1000 per airport also. He noted they have a contract with the federal government to do some inspections of certain airports throughout the state. They receive $220 per inspection from the government and have be able to recoup some of their costs of inspections in this manner.

OPPONENTS: There were none.

Questions were then called for from the committee members. Senator Fuller asked Mike Ferguson about the bill currently before the House to repeal the licensing of airports (HB 354). Mike Ferguson explained this bill, HB 420, would provide the mechanism if HB 354 does not pass, to be able to charge a fee for the inspection of airports. Senator Fuller asked about the court decision and Rep. Schye noted this came about because of the Seeley Lake court case. The courts have now ordered that the law has to be enforced to license airports.

Senator Weeding was concerned about the costs for private airstrips and wondered what is considered public or private. Mike Ferguson explained if a strip is strictly private and not open for public use they would be exempt but if they are used by the public for commercial use then they would require licensing. The cost would be approximately $250 to $300 per airport. The cap is $1000 on each airport, some might cost more than this and some less. They do not plan to make money on the licensing but would like to be able to pay for the actual costs of licensing.

for notification in some cases. Lester Loble told Senator Goodover that he had had some concerns at first but had no problems with the bill the way it is being proposed now.

Senator Thayer MOVED TO KEEP THE LANGUAGE FROM THE WHITE COPY OF THE BILL IN SECTIONS 1 AND 2. This motion carried.

Senator Thayer then MOVED TO CHANGE THE WORD REASONABLE TO RESPONSIBLE ON PAGE 3, LINE 7. This motion carried.

Senator Christiaens then MOVED THAT HOUSE BILL 567 BE CONCURRED IN AS AMENDED. The motion carried.

CONSIDERATION OF HOUSE BILL 338: The committee had been given a gray bill with all the amendments being proposed to House Bill 338. Two letters of opposition had been received and were distributed. (EXHIBIT 11) Mary McCue explained there is now a provision to allow a person to sell for a limited time only other kinds of insurance. There is also the removal of the franchise relationship. She noted that the fee situation was covered in a different statute. It was noted there was one opponent Teddi Annear from Bozeman.

The committee decided to wait for more information before taking final consideration.

The meeting was adjourned at noon.

SENATOR MIKE HALLIGAN, Chairman

cd

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/26

SENATE SENT #

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

EXHIBIT 12
BUSINESS & INDUSTRY
March 26, 1985

AMERICAN TITLE & ESCROW

1216 — 16th Street West
Alpine Village North, Suite 21
Billings, Montana 59102-4198
Phone (406) 248-7877

March 13, 1985

Dear Committee Member Thayer:

Thank you for the opportunity to express my views in opposition to House Bill No. 338 as it pertains to title insurance agents.

The said bill attempts to make statutory law as to contracts between agents who write the title policies and underwriters, by making the contracts subject to review by the State and thus medddling in private contracts.

The said bill includes as "title insurance business" the handling of Escrow Closings, Settlements and Closings of Real Estate transactions. It is attempting to broaden the field of title insurance to include fidelity insurance.

The said bill attempts to control contracts of reinsurance between and among underwriters. Again, the Bill is meddling in private contractual arrangements.

Section 7, Page 9, of the bill attempts to put limitations on Escrow Closings and settlement services. Again, this is an arrangement between the agent and the underwriter together with a fidelity insurer for the misappropriation of funds.

Section 8, Page 11, has been under the control of underwriters and thus, if an agent does not perform his search properly and the underwriter has losses, the underwriter will cancel the agent's license.

Section 9, Page 12, deals with claims and reporting the same to the underwriter. This Section is dealt with in the policy as issued, since all policies provide the method for reporting claims to the home office of the underwriter.

Sections 11 and 12 deal with rate splitting and prohibiting the splitting of charges. All of the Underwriters' Rate and Form Manuals as filed with the Montana Insurance Commissioner contain the following:

> "No commission or bonus or discount shall be paid or allowed on title insurance or any other title services"

The underwriters monitor the agents. In addition thereto, there is Section 33-17-1103, which pertains to sharing of commissions and gives authority to the Montana Insurance Commission to enforce the same if the need arises.

Sections 13 and 14 attempt to deal with damages, costs and attorney fees. All attorneys and title agents that are informed are familiar with the Jarcow decision, which goes into great detail in these areas; and in addition thereto, the Jarcow case deals with the imputed "bad faith" theory, which imposes punitive damages.

Continued on Page No. 2.

Section 15 attempts to force a title insurance policy onto a purchaser of land if they obtain a loan policy. Again, this is attempting to regulate loan closing agents and lenders when they perform their closings and settlements.

In 1979 the Montana Legislature passed the "Sunset Law" Section 2-8-103 M.C.A. and thus repealed all the laws relating to abstracts. This was one of the first deregulation bills. House Bill No. 338 is attempting indirectly to reinstate the abstract requirements as to examination and licensing. Furthermore, it is attempting to regulate private contracts between agents and underwriters. In addition thereto, since the legislature is having a "hard time" to make ends meet on the budget, this will only add more money to be spent, for which there will be no income to affect the same.

Briefly, my qualifications are:

(a) Graduate of Law School
(b) Admitted to Montana Bar in March, 1948, and I am a member as of this writing
(c) Member of the Yellowstone County Bar Association, as of this writing
(d) Obtained my Abstracter's License in August, 1975
(e) June, 1977 Montana Bar sponsored Indian Law Seminar with Cale Crowley as chief contributor, which I attended
(f) November, 1977 California Continuing Education of the Bar course covering Title Insurance and Litigation
and also Title Insurance and the use of special Endorsements
(g) February, 1978 Montana Bar sponsored a seminar entitled "Real Estate Law"
(h) March, 1978 Practicing Law Institute from New York Law School sponsored a seminar on "Title Insurance In Major Real Estate Transactions"
(i) April, 1979 and Practicing Law Institute sponsored a seminar on Title Insurance and the Attorney's Role.
The course covered:
    (1) Policy Coverages
    (2) Special Coverages
    (3) Claims against the Insurer
    (4) Defense to Claims
    (5) Underwriters Duty to Defend
    (6) Role of the Lawyer
    (7) Lawyer as a Title Agent
    (8) Disposing of Title Objections

(j) August, 1979 the New York School of Law sponsored a seminar on "How to Practice under the new Bankruptcy Code insofar as it pertains to Real Property"
(k) 1980 Practicing Law Institute had a seminar on "Real Property Title Insurance and its role in financing and conveyancing"
(l) 1982 Practicing Law Institute had a seminar on Advanced Title Insurance Problems regarding owners and lenders
(m) October 1984 in Portland, Oregon, the ALTA held a seminar on Title Insurance
(n) December, 1984 the Practicing Law Institute held a seminar on "New Trends in Title Insurance" and Use of Endorsements to Title Policies

Continued on Page No. 3

For your information, in 9 out of the 10 seminars above described which I attended, I was the only Title Insurance agent from Montana.

At this time I want to thank you and your fellow Committee Members for considering the facts that are contained in this letter, and I hope that House Bill 338 is killed in this Committee.

Very truly yours,

S. J. Strekall,
Manager of American Title & Escrow

SJS:lb

EXHIBIT 12
BUSINESS & INDUSTRY
March 26, 1985

CARBON TITLE GUARANTY

2 NORTH BROADWAY — THE POLLARD
P. O. DRAWER 10 — RED LODGE, MONTANA 59068
406-446-2603

March 13, 1985

Montana State Senate
Business and Industry Committee
Hon. Mike Halligan, Chairman
State Capitol Building
Capitol Station
Helena, Montana 59620

Re: House Bill 338
Montana Title Insurance Act

Dear Chairman Halligan and Committee Members:

House Bill 338 was drafted and proposed by the Montana Land Title Association, a 75 year old organization whose members are mostly ex-abstractors and whose desire it is to revive the old Abstractors Law (repealed in 1981) and the Board of Abstractors (abolished by "Sunset Law," 1979.)

House Bill 338 was primarily designed by the Montana Land Title Association to restrict the licensing of title insurance agents to its members only, thus eliminating all competition.

No necessity exists for the passage of House Bill 338. There are not now, nor has there been in the past, any consumer complaints relative to the title insurance industry or agents made to the office of the Commissioner of Insurance or by that office to the Attorney General for prosecution or litigation.

Therefore, to enact House Bill 338 into law would violate both the spirit and the letter of the "Legislative Review" law as follows:

"2-8-101 (2) (c) Montana Code Annotated. No profession, occupation, business, industry or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose."

"2-8-101 (2) (e) Montana Code Annotated. The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market."

Further, relative to real estate sale and loan closings, escrows and settlement services, (Section 7) these activities have nothing to do with "title insurance," and are engaged in by banks, real estate agents, attorneys, credit unions and other independent agencies. Therefore, the office of the insurance commissioner lacks jurisdiction to regulate such activities.

Further, the proponents of House Bill 338 have falsely stated that at the present time anyone can obtain a title insurance agents license. In fact, one can only obtain a title insurance agents license by first having been appointed as an agent by a title insurance underwriter licensed to do business in the State of Montana. These companies are not going to (and do not now) appoint unqualified persons to act as their agents, for to do so would only result in financial loss to that underwriter, and not to the consumer.

Therefore, there is no reason for the requirement that insurance agent applicants pass an examination prior to licensing. (Section 18.)

If the committee honestly feels that there should be an examination requirement for title insurance applicants in the future, then those presently and lawfully licensed as title insurance agents should be exempted from such requirement.

The proponents of House Bill 338 have also falsely represented that a

grandfather clause exempting those presently and legally licensed would be unconstitutionally discriminatory, and cite Montana Land Title Association v. First American Title, 176 Mont. 471 (1975) as authority.

That case held that the grandfather clause there in question was unconstitutionally discriminatory, but went on to say that grandfather clauses in general are, and always have been, constitutional by quoting the following language: "the constitutional provisions against discrimination do 'not forbid statutes and statutory changes to have a beginning, and thus to discriminate between the rights of an earlier and later time.' All things must have a period of adjustment, and such classification is not 'arbitrary classification.'"

Therefore, the following amendment to Section 18 (6) (pages 23 and 24) is suggested:

"(h) any individual lawfully licensed as a title insurance agent as of or immediately prior to January 1, 1985, and thereafter continuing to be so licensed;"

Also, I believe that attorneys licensed to practice law in the State of Montana should also be exempt from an examination. This exemption could be accomplished as follows:

(i) licensed Montana attorneys applying for title insurance agent's license."

Lastly, I enclose herewith a list of over 50 Montana individuals or businesses who are opposed to House Bill 338. We urgently request that you not pass this bill.

Very truly yours,

A. L. Craddock
Licensed Montana Attorney at Law
Licensed Montana Title Insurance Agent

ALC:bjs

Enclosures

1. Treasure State Title, Licensed Corporate Title Insurance Agency, Hardin, Montana.

2. Helen Deneen, Licensed Title Insurance Agent, Hardin, Montana.

3. Morgan Deneen, owner of Licensed Title Insurance Agency, Hardin, Montana.

4. Rick Seder, Licensed Real Estate Broker, Hardin, Montana.

5. Natasha J. Morton, Licensed Montana Attorney, Hardin, Montana.

6. Douglas Freeman, Licensed Montana Attorney, Hardin, Montana.

7. Wayne Parris, President, Federal Land Bank Association of Billings, Montana.

8. Wayne Meridith, Production Credit Association, Hardin, Montana.

9. Dave Reisig, Production Credit Association, Hardin, Montana.

10. Patricia D. O'Connor, Licensed Title Insurance Agent, Hardin, Montana.

11. Ray Grant, Licensed Title Insurance Agent, Miles City, Montana.

12. Nick Murnion, Licensed Montana Attorney, Jordan, Montana.

13. David Rivenes, Licensed Title Insurance Agent, Miles City, Montana.

14. Joseph Bradley, Licensed Montana Attorney, Laurel, Montana.

15. Larry Herman, Licensed Montana Attorney, Laurel, Montana.

16. Joseph E. Mudd, Licensed Montana Attorney, Bridger, Montana.

17. Wayne L. Vick, Licensed Montana Attorney, Bridger, Montana.

18. Title Montana, Inc., Licensed Corporate Title Insurance Agency, Bozeman, Montana.

19. Richard Booth, Licensed Title Insurance Agency Manager, Bozeman, Montana.

20. McKinnley Anderson, Licensed Montana Attorney and Licensed Title Insurance Agent, Bozeman, Montana.

21. Marvin Albach, Licensed Montana Attorney, Bozeman, Montana.

22. Buffalo Land Title Company, Licensed Corporate Title Insurance Agency, Bozeman, Montana.

23. Andrew Siebert, Licensed Title Insurance Agent, Bozeman, Montana.

24. Warren Tucker, Licensed Montana Attorney, Virginia City, Montana.

25. William F. Meisberger, Licensed Montana Attorney and Real Estate Broker, Forsyth, Montana.

26. Mary Jane Bertrand, Licensed Title Insurance Agent, Miles City, Montana.

27. Darrell Peterson, Licensed Montana Attorney and Title Insurance Agent, Cutbank, Montana.

28. North American Land Title Company of Forsyth, Licensed Corporate Title Insurance Agency, Forsyth, Montana.

29. Lance A. Pedersen, Licensed Montana Attorney, Hardin, Montana.

30. Richard Sidwell, Sidwell Land and Cattle Company, Columbus, Montana.

31. William R. Palmer, Land Developer, Billings, Montana.

32. Phillip O'Connell, Licensed Montana Attorney and Title Insurance Agent, Missoula, Montana.

33. Tim Ritter, Petroleum Land Title Examiner, Red Lodge, Montana.

34. Genivieve Remillard, Corporate Title Agency Owner, Forsyth and Glendive, Montana.

35. Claudia R. Elton, Licensed Title Insurance Agent, Red Lodge, Montana.

36. Carbon Title Guaranty, Licensed Corporate Title Agency, Red Lodge, Montana.

37. R. K. Craddock, Licensed Title Insurance Agent, Red Lodge, Montana.

38. A. L. Craddock, Licensed Montana Attorney and Title Insurance Agent, Red Lodge, Montana.

39. Doloris Storm, Licensed Title Insurance Agent, Forsyth, Montana.

40. North American Land Title Company of Glendive, Licensed Corporate Title Insurance Agency, Glendive, Montana.

41. Muriel Lohman, Licensed Title Insurance Agent, Glendive, Montana.

42. Insured Titles, Inc., Licensed Title Insurance Underwriter with 15 Licensed Title Insurance Agents who are also Licensed Montana Attorneys, Wichita, Kansas.

43. Terry J. Hanson, Licensed Montana Attorney, Miles City, Montana.

44. Russell K. Filner, Licensed Montana Attorney, Billings, Montana.

45. Richard C. Nellen, Licensed Montana Attorney, Hardin, Montana.

46. Richard A. Dorn, Licensed Real Estate Broker, Hardin and Billings, Montana.

47. Earle C. Gross, President, Little Horn State Bank, Hardin, Montana.

48. L. L. Shore, Vice President, Little Horn State Bank, Hardin, Montana.

49. Harold G. Stanton, Licensed Montana Attorney, Hardin, Montana.

50. American Title and Escrow, Licensed Title Insurance Agency, Billings, Montana.

51. Steven Strekall, Licensed Montana Attorney and Title Insurance Agent, Billings, Montana.

52. Teddy Annear, Real Estate Closing, Escrow and Disbursement business, Bozeman, Montana.

53. Harry Annear, Contractor and Concerned Citizen, Bozeman, Montana.

54. Beverly B. Shaw, Concerned Citizen, Red Lodge, Montana.

DISPOSITION OF HOUSE BILL 571: This bill deals with the licensing of professional counselors. There had been some discussion of combining the board of social workers with the board of professional counselors. The social workers had not commented on this however. Ted Doney, from the Professional Counselors, had suggested in combining the board that there be three members from the social workers, three members of the professional counselors and one public member. It was noted there are presently four people on the board of social workers whose terms expire in '87. A decision would have to be made as to which of these members would be dropped before the expiration of their term. Shirley Miller from the Bureau of Professional Licensing, stated they were neutral on this particular bill but would not like the three year license renewal that is in the bill presently.

Senator Thayer MOVED THE FIRST THREE AMENDMENTS BE ADOPTED. (EXHIBIT 3) The motion carried.

A brief discussion of the amendments that had been proposed by Rep. Bergene at the hearing. (EXHIBIT 4) Shirley Miller felt the board should adopt rules to set annual renewal fees. Senator Christiaens felt the language "but not limited to" was just too broad. He felt the bill should specify which areas of counseling are included. Senator Fuller disagreed.

Senator Christiaens MOVED TO ADOPT AMENDMENTS 2 THROUGH 5 WITH THE ANNUAL LICENSE RENEWAL CHANGE. The motion carried.

Senator Fuller asked Jim Pomroy, from the Board of Social Work Examiners, to respond to his thoughts on combining the board. He explained his main concern would be the different factions that would be involved in the makeup of the board. Senator Fuller felt the boards should be smaller. Senator Christiaens felt that if boards become too small there is concern whether or not there is fair representation but he was in favor of smaller boards also.

Senator Weeding MOVED TO ADOPT AMENDMENTS TO HAVE A 7 MEMBER BOARD. (See EXHIBIT 3) This motion carried.

Lengthy amendments to House Bill 571 had been prepared which were mostly housekeeping. Senator Fuller MOVED TO ADOPT THESE AMENDMENTS. (EXHIBIT 5) The motion carried.

Senator Christiaens then MOVED TO CONCUR IN HOUSE BILL 571 AS AMENDED. The motion carried. Senator Keating will carry this on the Senate floor. Senator Neuman voted "no" to concurr in the bill as amended.

DISPOSITION OF HOUSE BILL 338: A gray bill for House Bill 338 had been prepared. (EXHIBIT 6) Some of the suggestions proposed by the proponents had been incorporated into the measure. Senator Fuller MOVED TO ADOPT THE GRAY BILL TO HOUSE BILL 338. Senator Christiaens spoke against the bill

Bill Gowan from the American Title Association, stated there have been problems and they are just asking that people who are licensed to do this type of work be tested to see that they are competent and qualified. He felt it would be for the protection of the consumer. Gene Phillips stated there have been some abuses and they are just trying to prevent this from occurring.

A brief discussion of the need for abstracting. In recent years there has been a conversion to title insurance but in certain cases abstracting is still used in the oil and gas business especially and in some rural areas. Senator Christiaens felt he had received most of the complaints from abstract people about this legislation.

The motion to adopt House Bill 338 in gray bill form carried. Senator Christiaens, Senator Gage and Senator Neuman voted "no".

DISPOSITION OF HOUSE BILL 395: This bill was sent out of committee with an adverse report and later rereferred back into committee for further consideration. Senator Thayer stated there is still a question that the insurance companies are denying coverage to barowners but since there has not been litigation he could not understand the reason for raising the rates. He felt we might be making the situation even worse. Senator Gage had talked with Karl England about whether or not anyone had talked with the insurance people and no one had been in contact with them. Senator Halligan had talked to Roger McGlenn after the hearing and he had told him it was just a national trend to raise the rates.

Senator Fuller felt we were just giving some immunity to the social host. Mary McCue noted you cannot immunize yourself against willful misconduct. Senator Halligan felt that you cannot violate public policy in general, if your are negligent you should be held responsible. Senator Gage felt perhaps the only value in the bill would be that it would preclude some of the harrassment type of cases. Senator Neuman could not understand why the insurance rates were going up if nothing had been collected.

Senator Goodover MOVED TO TABLE HOUSE BILL 395. Senator Fuller, Senator Kolstad, Senator Neuman, Senator Williams, and Senator Thayer voted "no". The motion carried.

The meeting was adjourned at 12:10 noon.

SENATOR MIKE HALLIGAN, Chairman

cd

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 3-27-85

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

EXHIBIT 6
BUSINESS & INDUSTRY
March 27, 1985

HOUSE BILL NO. 338

INTRODUCED BY ADDY, JONES, C. SMITH, LYNCH, HARP, PAVLOVICH, MERCER, SCHULTZ, BRADLEY, DANIELS, QUILICI, D. BROWN, KEATING, STIMATZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE LICENSING AND REGULATION OF TITLE INSURANCE AGENTS~~,--THE EXAMINATION OF TITLE INSURANCE PLANTS AND--THE--ISSUANCE--OF CERTIFICATES--OF--AUTHORITY--THEREFOR~~, AND THE REGULATION OF CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY; AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213, ~~AND~~ 33-17-1101, AND 33-17-1102, MCA; AND REPEALING SECTION 33-25-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 may be cited as the "Montana Title Insurance Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted for the receipt of

that representation, listing all recorded conveyances, instruments, or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title agent for a title insurance policy, but does not include a title agent.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity

that controls, is controlled by, or is under common control with a producer of title business; or

(e) person with whom a producer of title business or an associate has an agreement, arrangement, understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this title.

(5) "Controlled business" means that portion of the business of title insurance in this state of a title insurer or title agent that is referred to it by a producer or associate having a financial interest in the title insurer or title agent.

(6) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(7) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions stated in the report or other matters that may be incorporated by reference therein. Preliminary report includes a commitment or binder.

(8) ~~(a)~~ "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

~~(i)~~(A) buying or selling interests in real property;

~~(ii)~~(B) making loans secured by interests in real property; or

~~(iii)~~(C) acting as broker, agent, or representative of a person described in subsection (8)(a)(i) or (8)(a)(ii).

~~(b)--"Producer--of--title-business"-does-not-include-an attorney-licensed-to-practice-law-in-this-state.~~

(9) "Rate" means fees for:

(a) issuing a title insurance policy, including any service charge or fee for the issuance;

(b) abstracting, searching, and examining title to real property when prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy; and

(c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy.

(10) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of title insurance business, whether or not the consent or approval of another person is sought or obtained with respect to the referral.

(11) (a) "Title agent" means a person who holds a valid title agent's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) "Title agent" does not include an approved attorney.

(12) "Title insurance business" means:

(a) issuing or offering to issue a title insurance policy as an insurer;

(b) transacting or proposing to transact any of the following as a title insurer or title agent, in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) soliciting or negotiating the issuance of a title insurance policy;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

(iii) handling escrows, settlements, or closings;

(iv) executing title insurance policies, reports, commitments, binders, and endorsements;

(v) effecting contracts of reinsurance; or

(vi) abstracting, searching, or examining titles;

(c) transacting, as a title insurer or agent, matters subsequent to the issuance of a title insurance policy and

arising out of the policy; or

(d) doing or proposing to do business that, in substance, is equivalent to any of the activities described in subsections (12)(a) through (12)(c) in a manner designed to evade the provisions of this title.

(13) "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

(a) defects in or liens or encumbrances on the title to the stated property;

(b) unmarketability of the title to the stated property; or

(c) invalidity or unenforceability of liens or encumbrances on the stated property.

(14) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer so authorized.

(15) "Title plant" means a set of privately maintained records in which entries have been made of documents imparting constructive notice, under the law, of matters affecting title to real property, an interest therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant is maintained and

from which the ownership of real property within the jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be determined.

NEW SECTION. Section 3. Application. (1) [Sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 apply to all title insurers, title insurance rating organizations, title agents, applicants for title insurance, title insurance policyholders, and all other persons engaged in title insurance business in this state.

(2) [Sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 do not authorize the practice of law by a person who is not licensed to practice law in this state, and [sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 do not authorize the commissioner to regulate the practice of law.

NEW SECTION. Section 4. Abstracts of title distinguished from title insurance policy and preliminary report. (1) A title insurance policy is not an abstract of title or representation as to the condition of title to the stated property.

(2) A preliminary report is not an abstract of title. The rights, duties, and liabilities applicable to the preparation and issuance of an abstract of title are not applicable to the issuance of a preliminary report. A preliminary report does not constitute a representation as

to the condition of title to real property, but constitutes a statement of the terms and conditions upon which the issuer is willing to issue its title insurance policy.

NEW SECTION. Section 5. Limitations on authority. (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. AN INSURER AUTHORIZED TO TRANSACT ANY COMBINATION OF KINDS OF INSURANCE, INCLUDING TITLE INSURANCE, UNDER AN EXISTING CERTIFICATE OF AUTHORITY MAY CONTINUE TO DO SO UNTIL THE CERTIFICATE OF AUTHORITY IS RENEWED EFFECTIVE JUNE 1, 1986.

(2) A title insurer may not engage in the business of guaranteeing payment of the principal or interest of bonds or mortgages.

(3) A title insurer may not engage in the business of guaranteeing the obligations of other persons, except its title agents or approved attorneys in the normal course of its business.

NEW SECTION. Section 6. Underwriting standards -- record retention. (1) A title insurer may not issue a title insurance policy unless it, its title agent, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of

title in accordance with sound underwriting practices. The title insurer or title agent must preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, no title insurer or title agent may knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured ~~or assigns~~ arising thereunder.

NEW SECTION. Section 7. Escrow, closing, or settlement services -- title indemnification -- maintenance of accounts -- rules. (1) A title insurer or title agent may provide escrow, settlement, or closing services, or any combination thereof, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3).

(2) A title insurer or title agent shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title agent. A title insurer or agent may use such funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) pay ANY interest RECEIVED on funds, deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) A title agent must keep books of account, records, and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner that the commissioner or his authorized representative may readily ascertain, under the authority of 33-1-402, whether the title agent has complied with all applicable provisions of this title.

NEW SECTION. Section 8. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title agent and title insurer, upon appropriate notice to the parties to the contract, if he finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the agent's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title agent. Factors the commissioner may consider in this determination include but are not limited to the agent's

duties under the contract and the general level of amounts paid to or retained by other title agents in the state performing or assuming comparable duties.

(2) No person may act as a title agent under an agency contract that has been disapproved by the commissioner.

NEW SECTION. Section 9. Report of claims. A title agent must immediately report every loss claim to the title insurer that issued the policy against which the claim is presented.

NEW SECTION. Section 10. Refusal, suspension, or revocation of title agent's license. (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title agent or may suspend or revoke a title agent's license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title agent license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in the conduct of his affairs under his title agent's license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a firm, corporation, or other business entity licensed as a title agent for the actions described in subsection (1) of any individual designated in the license to exercise its powers.

NEW SECTION. Section 11. Sharing of rate proceeds. Title insurers and agents may share rate proceeds between or among themselves in any combination and may exchange business and share commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee.

NEW SECTION. Section 12. Prohibited practices -- referrals -- splitting charges -- exemptions. (1) Except as provided in subsection (2), no person may:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title

insurance business will be referred to a title agent; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance ~~agent-or-franchise-relationship~~ AGENCY, if:

(i) at or prior to the time of a referral a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title agent to which the person is referred; and

(ii) the person is not required to use a particular agent.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues

or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title agent for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

NEW SECTION. Section 13. Prohibited practices -- penalties -- treble damages, court costs, and attorney fees -- injunction. (1) A person found to have violated the provisions of [section 12] is jointly and severally liable to the person charged for the title insurance business involved in the violation for an amount equal to three times the amount of the charge paid for the business.

(2) In a civil action based on [section 12] and this section, the court may award to the prevailing party court

costs plus reasonable attorney fees.

(3) The commissioner may bring a civil action to enjoin a violation of [section 12].

NEW SECTION. Section 14. Prohibited practices -- producer and associates -- prohibition of favored agent or insurer. No producer or associate may, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title agent. No title insurer or title agent may knowingly participate in a plan or transaction prohibited by this section.

NEW SECTION. Section 15. Notice of issuance of mortgagee policy. (1) A title insurer or title agent that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when no owner's policy has been ordered, must inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for his protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title agent must obtain from him a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title agent must so note in the file. The statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title agent for at least 5 years after receipt.

NEW SECTION. --Section 16. --Title plants -----requirement ---standards ----limitations on sale ----rules. --(1)-No person may--act--as--a-title-insurance-agent-and-no-title-insurance agent-may-transact-the-business-of-title-insurance--in--this state-unless-the-agent-maintains-a-title-plant-for-which-the commissioner--has--issued--a--certificate--of-authority-or-a permit-without-inspection-under-the-provisions--of--[section 17-or-19].

(2)--The--commissioner--shall--adopt-rules-establishing standards-for-operation-of-title-plants-in-this-state.---The rules--may-include-standards-for-tract-indices,-general-name indices,-maps,-plats,-and-other-organizing-devices.

(3)--Nothing-in-this-section-prevents-two-or-more-title agents-from-owning-and-maintaining-a-title--insurance--plant together-for-their-joint-use.

~~(4)--No--title--agent--may-sell-or-otherwise-transfer-a title-plant-unless-the-commissioner-first--inspects--it--and determines-it-is-in-compliance-with-this-title-and-the-rules of--the--commissioner.---The--commissioner--shall--conduct-a compliance-inspection-upon-request.~~

NEW-SECTION.--Section-17.---Title-plants-----certificate of--authority------inspections.--(1)-A-title-agent-may-apply for-a-title-plant-certificate-of-authority-on-forms-provided by-the-commissioner.

~~(2)--The--commissioner--must--issue---a---title---plant certificate---of--authority--to--a--title--agent--if,--after inspection-of-the-plant,-the-commissioner--finds--the--title plant---in--compliance--with--this--title--and--title--plant standards-established-by-the-commissioner.~~

~~(3)--A-certificate-of-authority-continues-from-the-date issued-until-sale-or-other-transfer-of-a-plant-unless-sooner revoked-by-the-commissioner-or-relinquished-by--the--holder.~~

~~(4)--The--commissioner--must-inspect-a-title-plant-when required-under-[sections-16-and-19]-and-this--section.---The commissioner-may-inspect-a-title-plant-at-any-time-under-the authority---of---33-1-402--and--revoke--the--certificate--of authority-of-a-title-plant-found-to-be--not--in--compliance, after-a-hearing-held-pursuant-to-this-title.~~

~~(5)--The--commissioner--may--contract--with-a-qualified person,-firm,-or-organization-to-conduct--inspections--under~~

this section.

NEW SECTION. Section 18. Costs of inspection of title plants -- rules. A title agent shall pay the commissioner an inspection fee based on the reasonable costs of inspection, as established by rule by the commissioner. In establishing an inspection fee, the commissioner may include such costs as travel expenses, a reasonable expense allowance, and compensation at reasonable rates of an inspector.

NEW SECTION. Section 19. Permit without inspection for existing title plants -- application. (1) A title agent transacting the business of title insurance on October 1, 1985, may apply for a title plant permit without inspection by December 31, 1985, and may not transact the business of title insurance after July 1, 1986, unless he has received a temporary permit or certificate of authority from the commissioner.

(2) A title agent shall apply for a temporary permit, on forms provided by the commissioner, providing information reasonably required by the commissioner that shows that the agent maintains an adequate and complete title plant in the county where he intends to do business. The title insurer with whom the agent intends to do business must sign the application certifying that the agent is known to have a good reputation and is worthy of public trust and that the

~~insurer knows of no fact or condition that would disqualify the agent from receiving the permit.~~

~~(3) If the commissioner denies an application for a permit without inspection, the applicant may request an inspection of his title plant and apply for a certificate of authority as provided in [section 17].~~

~~(4) A title agent who receives a title plant permit without inspection is not relieved of the requirement of inspection upon sale or transfer of the title plant or as required by the commissioner under 33-1-402.~~

~~(5) A permit without inspection continues from the date issued until sale or other transfer of a plant, unless sooner revoked by the commissioner.~~

~~(6) After inspection, the commissioner may revoke a permit of a title plant found to be not in compliance, after a hearing held pursuant to this title.~~

Section 16. Section 33-2-108, MCA, is amended to read:

"33-2-108. Combinations of insuring powers. (1) Except as provided in subsections (2), (3), and (4) and [section 5], an insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

(2) A life insurer may also grant annuities but shall not be authorized to transact any other kind of insurance other than disability, except that if the insurer is

otherwise qualified therefor, the commissioner shall continue to so authorize any life insurer which, immediately prior to January 1, 1961, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(3) A reciprocal insurer shall not transact life insurance.

(4) A title insurer shall be a stock insurer."

Section 17. Section 33-2-851, MCA, is amended to read:

"33-2-851. Special investments by title insurer. (1) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its ~~abstract~~ title plant, as defined in [section 2], and equipment and, with the commissioner's consent, in stock of abstract companies and of title agents as defined in [section 2]. ~~If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be prorated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance, but the capital so assigned to title insurance shall in no event be less than $100,000.~~

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium

or guaranty fund reserve provided for under 33-2-517.

(3) Any such ~~abstract~~ title plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost."

Section 18. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection ~~(5)~~ (6) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; for the purposes of this

provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance;

(h) title insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

~~(5)--THE---COMMISSIONER---SHALL---ASSESS---A---FEE--FOR ADMINISTERING-THE-EXAMINATION-TO-AN-APPLICANT--FOR--A--TITLE INSURANCE--AGENT'S--LICENSE--THAT-IS-CALCULATED-TO-COVER-THE COST-OF-ADMINISTRATION-OF-THE-EXAMINATION.~~

~~(5)~~(6)(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation

thereof refused by the commissioner, except that the provisions of this subsection ~~(5)~~~~(6)~~(5)(b) do not apply to title agents, as defined in [section 2];

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

~~(g)--title-insurance-agents;~~

~~(h)~~(g) mechanical breakdown insurance agents."

Section 19. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under

33-17-212 available to applicants with reasonable frequency and at a place in this state reasonably accessible to the applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion but at least once a month.

(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(5) The examination of a title agent, as defined in [section 2], must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 20. Section 33-17-1101, MCA, is amended to read:

"33-17-1101. Place of business -- display of license

-- records. (1) Every agent shall have and maintain a place of business accessible to the public. Such place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof. Nothing in this section prohibits maintenance of such place of business in the licensee's place of residence.

(2) The license of the licensee and the license of each solicitor appointed by and representing the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions, except that title agents, as defined in [section 2], shall retain records as provided in [sections 6 and 15]."

SECTION 21. SECTION 33-17-1102, MCA, IS AMENDED TO READ:

"33-17-1102. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in

the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. ~~If~~ Except for a title agent as defined in [section 2], if the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is, upon conviction, guilty of theft and shall be punished as provided by law."

NEW SECTION. Section 22. Repealer. Section 33-25-103, MCA, is repealed.

NEW SECTION. Section 23. Extension of authority. Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 24. Codification instruction. Sections 1 through ~~19~~ 15 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through ~~19~~ 15.

NEW SECTION. Section 25. Severability. If a part of

this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

STANDING COMMITTEE REPORT

MARCH 27 19 85

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 338

third reading copy (blue color)

GENERALLY REVISE TITLE INSURANCE LAWS

(Lynch)

HOUSE BILL 338

Respectfully report as follows: That No.

be amended as follows:

1. Title, line 13.
Following: line 12
Strike: "AND"
Following: "33-17-1101,"
Insert: "AND 33-17-1102,"

2. Page 3, line 20.
Following: "(8)"
Strike: "(a)"

3. Page 3, line 25.
Following: line 25
Strike: "(i)"
Insert: "(a)"

4. Page 4, line 1.
Following: page 3
Strike: "(ii)"
Insert: "(b)"

5. Page 4, line 3.
Following: line 2
Strike: "(iii)"
Insert: "(c)"

(continued)

~~DO PASS~~

~~DO NOT PASS~~

Chairman.

6. Page 4, lines 5 and 6.
Strike: subsection (b) in its entirety

7. Page 8, line 8.
Following: "insurance."
Insert: "An insurer authorized to transact any combination of kinds of insurance, including title insurance, under an existing certificate of authority may continue to do so until the certificate of authority is renewed effective June 1, 1986."

8. Page 9, line 20.
Following: "insured"
Strike: "or assigns"

9. Page 10, line 17.
Following: "pay"
Insert: "any"
Following: "interest"
Insert: "received"
Following: "funds"
Strike: ","

10. Page 14, line 3.
Following: "insurance"
Strike: "agent or franchise relationship"
Insert: "agency"

11. Page 22, line 7.
Following: "~~(5)~~"
Strike: "(6)"
Insert: "(5)"

12. Page 23, lines 6 through 9.
Strike: subsection 5 in its entirety
Renumber: subsequent subsection

13. Page 23, line 22.
Following: "~~(5)~~"
Strike: "(6)"
Insert: "(5)"

(continued on page 3)

14. Page 26, line 15.
Following: line 14
Insert: "Section 21. Section 33-17-1102, MCA, is amended to read:
"33-17-1102. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. ~~If~~ Except for a title agent as defined in [section 2], if the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee. (2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is, upon conviction, guilty of theft and shall be punished as provided by law." "

Renumber: subsequent sections

AND AS AMENDED
BE CONCURRED IN

Sen. Mike Halligan

HOUSE BILL NO. 338

INTRODUCED BY ADDY, JONES, C. SMITH, LYNCH, HARP, PAVLOVICH, MERCER, SCHULTZ, BRADLEY, DANIELS, QUILICI, D. BROWN, KEATING, STIMATZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TITLE INSURANCE; PROVIDING FOR THE LICENSING AND REGULATION OF TITLE INSURANCE AGENTS~~,~~ ~~THE EXAMINATION OF TITLE INSURANCE PLANTS AND THE ISSUANCE OF CERTIFICATES OF AUTHORITY, THEREFOR,~~ AND THE REGULATION OF CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY; AMENDING SECTIONS 33-2-108, 33-2-851, 33-17-212, 33-17-213, AND 33-17-1101, AND 33-17-1102, MCA; AND REPEALING SECTION 33-25-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 may be cited as the "Montana Title Insurance Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted for the receipt of that representation, listing all recorded conveyances, instruments, or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title agent for a title insurance policy, but does not include a title agent.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity

that controls, is controlled by, or is under common control with a producer of title business; or

(e) person with whom a producer of title business or an associate has an agreement, arrangement, understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this title.

(5) "Controlled business" means that portion of the business of title insurance in this state of a title insurer or title agent that is referred to it by a producer or associate having a financial interest in the title insurer or title agent.

(6) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(7) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions stated in the report or other matters that may be incorporated by reference therein. Preliminary report includes a commitment or binder.

(8) ~~(a)~~ "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

~~(i)~~(A) buying or selling interests in real property;

~~(ii)~~(B) making loans secured by interests in real property; or

~~(iii)~~(C) acting as broker, agent, or representative of a person described in subsection (8)(a)(i) or (8)(a)(ii).

~~(b)--"Producer--of--title-business"-does-not-include-an attorney-licensed-to-practice-law-in-this-state.~~

(9) "Rate" means fees for:

(a) issuing a title insurance policy, including any service charge or fee for the issuance;

(b) abstracting, searching, and examining title to real property when prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy; and

(c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy.

(10) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of title insurance business, whether or not the consent or approval of another person is sought or obtained with respect to the referral.

(11) (a) "Title agent" means a person who holds a valid title agent's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) "Title agent" does not include an approved attorney.

(12) "Title insurance business" means:

(a) issuing or offering to issue a title insurance policy as an insurer;

(b) transacting or proposing to transact any of the following as a title insurer or title agent, in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) soliciting or negotiating the issuance of a title insurance policy;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

(iii) handling escrows, settlements, or closings;

(iv) executing title insurance policies, reports, commitments, binders, and endorsements;

(v) effecting contracts of reinsurance; or

(vi) abstracting, searching, or examining titles;

(c) transacting, as a title insurer or agent, matters subsequent to the issuance of a title insurance policy and

arising out of the policy; or

(d) doing or proposing to do business that, in substance, is equivalent to any of the activities described in subsections (12)(a) through (12)(c) in a manner designed to evade the provisions of this title.

(13) "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

(a) defects in or liens or encumbrances on the title to the stated property;

(b) unmarketability of the title to the stated property; or

(c) invalidity or unenforceability of liens or encumbrances on the stated property.

(14) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer so authorized.

(15) "Title plant" means a set of privately maintained records in which entries have been made of documents imparting constructive notice, under the law, of matters affecting title to real property, an interest therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant is maintained and

from which the ownership of real property within the jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be determined.

NEW SECTION. Section 3. Application. (1) [Sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 apply to all title insurers, title insurance rating organizations, title agents, applicants for title insurance, title insurance policyholders, and all other persons engaged in title insurance business in this state.

(2) [Sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 do not authorize the practice of law by a person who is not licensed to practice law in this state, and [sections 1 through ~~19~~ 15], 33-25-101, and 33-25-102 do not authorize the commissioner to regulate the practice of law.

NEW SECTION. Section 4. Abstracts of title distinguished from title insurance policy and preliminary report. (1) A title insurance policy is not an abstract of title or representation as to the condition of title to the stated property.

(2) A preliminary report is not an abstract of title. The rights, duties, and liabilities applicable to the preparation and issuance of an abstract of title are not applicable to the issuance of a preliminary report. A preliminary report does not constitute a representation as

to the condition of title to real property, but constitutes a statement of the terms and conditions upon which the issuer is willing to issue its title insurance policy.

NEW SECTION. Section 5. Limitations on authority. (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. AN INSURER AUTHORIZED TO TRANSACT ANY COMBINATION OF KINDS OF INSURANCE, INCLUDING TITLE INSURANCE, UNDER AN EXISTING CERTIFICATE OF AUTHORITY MAY CONTINUE TO DO SO UNTIL THE CERTIFICATE OF AUTHORITY IS RENEWED EFFECTIVE JUNE 1, 1986.

(2) A title insurer may not engage in the business of guaranteeing payment of the principal or interest of bonds or mortgages.

(3) A title insurer may not engage in the business of guaranteeing the obligations of other persons, except its title agents or approved attorneys in the normal course of its business.

NEW SECTION. Section 6. Underwriting standards -- record retention. (1) A title insurer may not issue a title insurance policy unless it, its title agent, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of

title in accordance with sound underwriting practices. The title insurer or title agent must preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, no title insurer or title agent may knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured ~~or assigns~~ arising thereunder.

NEW SECTION. Section 7. Escrow, closing, or settlement services -- title indemnification -- maintenance of accounts -- rules. (1) A title insurer or title agent may provide escrow, settlement, or closing services, or any combination thereof, and may operate as an escrow, settlement, or closing agent, subject to the provisions of subsections (2) and (3).

(2) A title insurer or title agent shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled thereto under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title agent. A title insurer or agent may use such funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) pay ANY interest RECEIVED on funds, deposited with it in connection with an escrow, settlement, closing, or title indemnification, to the depositing person or as otherwise provided by the terms thereof;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) A title agent must keep books of account, records, and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in such a manner that the commissioner or his authorized representative may readily ascertain, under the authority of 33-1-402, whether the title agent has complied with all applicable provisions of this title.

NEW SECTION. Section 8. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title agent and title insurer, upon appropriate notice to the parties to the contract, if he finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the agent's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title agent. Factors the commissioner may consider in this determination include but are not limited to the agent's

duties under the contract and the general level of amounts paid to or retained by other title agents in the state performing or assuming comparable duties.

(2) No person may act as a title agent under an agency contract that has been disapproved by the commissioner.

NEW SECTION. Section 9. Report of claims. A title agent must immediately report every loss claim to the title insurer that issued the policy against which the claim is presented.

NEW SECTION. Section 10. Refusal, suspension, or revocation of title agent's license. (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title agent or may suspend or revoke a title agent's license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title agent license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in the conduct of his affairs under his title agent's license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a firm, corporation, or other business entity licensed as a title agent for the actions described in subsection (1) of any individual designated in the license to exercise its powers.

NEW SECTION. Section 11. Sharing of rate proceeds. Title insurers and agents may share rate proceeds between or among themselves in any combination and may exchange business and share commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee.

NEW SECTION. Section 12. Prohibited practices -- referrals -- splitting charges -- exemptions. (1) Except as provided in subsection (2), no person may:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title

insurance business will be referred to a title agent; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance ~~agent or franchise relationship~~ AGENCY, if:

(i) at or prior to the time of a referral a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title agent to which the person is referred; and

(ii) the person is not required to use a particular agent.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues

or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title agent for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

NEW SECTION. Section 13. Prohibited practices -- penalties -- treble damages, court costs, and attorney fees -- injunction. (1) A person found to have violated the provisions of [section 12] is jointly and severally liable to the person charged for the title insurance business involved in the violation for an amount equal to three times the amount of the charge paid for the business.

(2) In a civil action based on [section 12] and this section, the court may award to the prevailing party court

costs plus reasonable attorney fees.

(3) The commissioner may bring a civil action to enjoin a violation of [section 12].

NEW SECTION. Section 14. Prohibited practices -- producer and associates -- prohibition of favored agent or insurer. No producer or associate may, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title agent. No title insurer or title agent may knowingly participate in a plan or transaction prohibited by this section.

NEW SECTION. Section 15. Notice of issuance of mortgagee policy. (1) A title insurer or title agent that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when no owner's policy has been ordered, must inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for his protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title agent must obtain from him a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title agent must so note in the file. The statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title agent for at least 5 years after receipt.

NEW-SECTION. --Section 16. --Title plants -----requirement ---standards ----limitations on sale ----rules. --(1) No person may--act--as--a title insurance agent and no title insurance agent may transact the business of title insurance--in--this state unless the agent maintains a title plant for which the commissioner--has--issued--a--certificate--of authority or a permit without inspection under the provisions--of--[section 17 or 19].

(2) --The--commissioner--shall--adopt rules establishing standards for operation of title plants in this state. ---The rules--may include standards for tract indices, general name indices, maps, plats, and other organizing devices.

(3) --Nothing in this section prevents two or more title agents from owning and maintaining a title--insurance--plant together for their joint use.

(4) --No--title--agent--may sell or otherwise transfer a title plant unless the commissioner first--inspects--it--and determines it is in compliance with this title and the rules of--the--commissioner. ---The--commissioner--shall--conduct a compliance inspection upon request.

NEW-SECTION. --Section 17. --Title plants -----certificate of--authority------inspections. --(1) A title agent may apply for a title plant certificate of authority on forms provided by the commissioner.

(2) --The--commissioner--must--issue---a---title---plant certificate---of--authority--to--a--title--agent--if, --after inspection of the plant, the commissioner--finds--the--title plant---in--compliance--with--this--title--and--title--plant standards established by the commissioner.

(3) --A certificate of authority continues from the date issued until sale or other transfer of a plant unless sooner revoked by the commissioner or relinquished by--the--holder.

(4) --The--commissioner--must inspect a title plant when required under [sections 16 and 19] and this--section. ---The commissioner may inspect a title plant at any time under the authority---of---33-1-402--and--revoke--the--certificate--of authority of a title plant found to be--not--in--compliance, after a hearing held pursuant to this title.

(5) --The--commissioner--may--contract--with a qualified person, firm, or organization to conduct--inspections--under

this section.

NEW SECTION. --Section 18. --Costs of inspection of title plants------rules. --A title agent shall pay the commissioner an --inspection --fee --based --on --the --reasonable ---costs ---of inspection, --as established by rule by the commissioner. --In establishing an inspection fee, the commissioner may include such --costs --as --travel --expenses, --a ---reasonable ---expense allowance, --and --compensation --at --reasonable --rates --of --an inspector.

NEW SECTION. --Section 19. --Permit --without ---inspection for existing title plants----application. --(1) A title agent transacting --the --business --of title insurance on October 1, 1985, may apply for a title plant permit without --inspection by --December --31, 1985, and may not transact the business of title insurance after July 1, 1986, unless he has received a temporary --permit --or --certificate --of --authority --from --the commissioner.

(2) --A --title agent shall apply for a temporary permit, on forms provided by the commissioner, providing information reasonably required by the commissioner that shows that --the agent --maintains an adequate and complete title plant in the county where he intends to do business. --The --title --insurer with --whom --the --agent --intends to do business must sign the application certifying that the agent is --known --to --have --a good --reputation --and is worthy of public trust and that the

insurer knows of no fact or condition that would --disqualify the agent from receiving the permit.

(3) --If --the --commissioner --denies an application for a permit without inspection, --the --applicant --may --request --an inspection of his title plant and apply for a certificate of authority as provided in [section 17].

(4) --A --title --agent --who receives a title plant permit without inspection is not relieved --of --the --requirement --of inspection --upon --sale --or transfer of the title plant or as required by the commissioner under 33-1-402.

(5) --A permit without --inspection --continues --from --the date --issued until sale or other transfer of a plant, unless sooner revoked by the commissioner.

(6) --After inspection, the commissioner --may --revoke --a permit of a title plant found to be not in compliance, after a hearing held pursuant to this title.

Section 16. Section 33-2-108, MCA, is amended to read:

"33-2-108. Combinations of insuring powers. (1) Except as provided in subsections (2), (3), and (4) and [section 5], an insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

(2) A life insurer may also grant annuities but shall not be authorized to transact any other kind of insurance other than disability, except that if the insurer is

otherwise qualified therefor, the commissioner shall continue to so authorize any life insurer which, immediately prior to January 1, 1961, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(3) A reciprocal insurer shall not transact life insurance.

(4) A title insurer shall be a stock insurer."

Section 17. Section 33-2-851, MCA, is amended to read:

"33-2-851. Special investments by title insurer. (1) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its ~~abstract~~ title plant, as defined in [section 2], and equipment and, with the commissioner's consent, in stock of abstract companies and of title agents as defined in [section 2]. ~~If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be prorated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance, but the capital so assigned to title insurance shall in no event be less than $100,000.~~

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium

or guaranty fund reserve provided for under 33-2-517.

(3) Any such ~~abstract~~ title plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost."

Section 18. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection ~~(5)~~ ~~(6)~~ (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; for the purposes of this

provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance;

(h) title insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

~~(5)--THE---COMMISSIONER---SHALL---ASSESS---A---FEE--FOR ADMINISTERING-THE-EXAMINATION-TO-AN-APPLICANT--FOR--A--TITLE INSURANCE--AGENT'S--LICENSE--THAT-IS-CALCULATED-TO-COVER-THE COST-OF-ADMINISTRATION-OF-THE-EXAMINATION.~~

~~(5)~~(6)(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation

thereof refused by the commissioner, except that the provisions of this subsection ~~(5)~~(6)(5)(b) do not apply to title agents, as defined in [section 2];

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

~~(g)--title-insurance-agents;~~

~~(h)~~(g) mechanical breakdown insurance agents."

Section 19. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under

33-17-212 available to applicants with reasonable frequency and at a place in this state reasonably accessible to the applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion but at least once a month.

(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(5) The examination of a title agent, as defined in [section 2], must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 20. Section 33-17-1101, MCA, is amended to read:

"33-17-1101. Place of business -- display of license

-- records. (1) Every agent shall have and maintain a place of business accessible to the public. Such place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof. Nothing in this section prohibits maintenance of such place of business in the licensee's place of residence.

(2) The license of the licensee and the license of each solicitor appointed by and representing the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions, except that title agents, as defined in [section 2], shall retain records as provided in [sections 6 and 15]."

SECTION 21. SECTION 33-17-1102, MCA, IS AMENDED TO READ:

"33-17-1102. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in

the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. ~~If~~ Except for a title agent as defined in [section 2], if the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is, upon conviction, guilty of theft and shall be punished as provided by law."

NEW SECTION. Section 22. Repealer. Section 33-25-103, MCA, is repealed.

NEW SECTION. Section 23. Extension of authority. Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 24. Codification instruction. Sections 1 through ~~19~~ 15 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through ~~19~~ 15.

NEW SECTION. Section 25. Severability. If a part of

this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-